

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of:	)	
	)	
FROZEN CONCENTRATED ORANGE	)	Investigation No.:
JUICE FROM BRAZIL	)	731-TA-326
	)	(Second Review)

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of: )  
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 FROZEN CONCENTRATED ORANGE ) Investigation No.:  
 JUICE FROM BRAZIL ) 731-TA-326  
 ) (Second Review)2

Tuesday,  
February 1, 2005

Room 101  
U.S. International  
Trade Commission  
500 E Street, SW  
Washington, D.C.

The hearing commenced, pursuant to notice, at 9:31 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

STEPHEN KOPLAN, COMMISSIONER (presiding)  
MARCIA E. MILLER, COMMISSIONER  
JENNIFER A. HILLMAN, VICE CHAIRMAN  
CHARLOTTE R. LANE, COMMISSIONER  
DANIEL R. PEARSON, COMMISSIONER

## APPEARANCES (continued):

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WILLIAM R. BISHOP, HEARINGS AND MEETINGS  
COORDINATOR

Staff:

SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT  
MEGAN SPELLACY, INVESTIGATOR  
ALFRED DENNIS, INDUSTRY ANALYST  
CATHERINE DeFILIPPO, ECONOMIST  
JOHN ASCIENZO, ACCOUNTANT/AUDITOR  
MICHAEL DIEHL, ATTORNEY  
DIANE MAZUR, SUPERVISORY INVESTIGATOR

## APPEARANCES (continued):

Non-Party in Opposition to the Revocation of the  
Antidumping Duty Order:On behalf of Louis Dreyfus Citrus,  
Inc.:

RANDAL G. FREEMAN, Senior Vice President,  
Louis Dreyfus Citrus, Inc.

Of Counsel:

REBECCA GRIFFIN, Esquire  
Wilkie Farr & Gallagher, LLP  
Washington, D.C.

In Support of the Revocation of the Antidumping Duty  
Order:On behalf of Citrovida Agro Industrial, Ltda.;  
Votorantim International North America, Inc.:

EDUARDO SCABBIA, Managing Director,  
Votorantim International North America, Inc.

Of Counsel:

JOHN D. GREENWALD, Esquire  
EVAN D. ALEXANDER, Esquire  
Wilmer Cutler Pickering Hale & Dorr, LLP  
Washington, D.C.

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P R O C E E D I N G S

(9:31 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-326 (Second Review) involving Frozen Concentrated Orange Juice from Brazil.

The purpose of this second five-year review investigation to determine whether revocation of the antidumping duty order covering frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Notice of investigation for this hearing, list of witnesses, and transcript order forms are available at the secretary's desk.

I understand the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the secretary. As all written material will be entered in full into the record, it need not be read to us at this time. The parties are reminded to give any prepared testimony to the secretary. Do not place testimony directly on the public distribution table.

1 All witnesses must be sworn in by the  
2 secretary before presenting testimony.

3 Finally, if you will be submitting documents  
4 that contain information you wish classified as  
5 business confidential, your request should comply with  
6 Commission Rule 201.6.

7 Madam Secretary, are there any preliminary  
8 matters?

9 MS. ABBOTT: No, Mr. Chairman.

10 CHAIRMAN KOPLAN: Very well. Let us proceed  
11 with the opening remarks.

12 MS. ABBOTT: Opening remarks in support of  
13 revocation will be by John D. Greenwald, Wilmer Cutler  
14 Pickering Hale & Dorr.

15 CHAIRMAN KOPLAN: Good morning, Mr.  
16 Greenwald.

17 OPENING REMARKS BY JOHN D. GREENWALD

18 MR. GREENWALD: Good morning. Thank you.

19 When the U.S. industry expressed no interest  
20 in maintaining the order on review, I had thought that  
21 this hearing would be pretty much a formality and easy  
22 conversation between us and the Commission. It still  
23 may be, but Mr. Freeman has decided to oppose  
24 revocation, and it may be a bit more spirited -- I  
25 hope not longer, but a bit more spirited than I had

1       imagined.

2               I was trying to understand why Mr. Freeman  
3       would oppose revocation. He has submitted no papers,  
4       so this is speculation on my part, and the truth is I  
5       failed in the speculation. I can't imagine what he is  
6       going to say. It is inconceivable to me that he could  
7       advance a single persuasive reason why the old FCOJ  
8       order at issue today should not be revoked.

9               How can, after all, someone who, barely a  
10      week or so ago, challenged the domestic industry's  
11      injury case in a new petition that covers Brazilian  
12      producers that account for over 80 percent of Brazil's  
13      FCOJ production and essentially 100 percent of its  
14      exports to the United States because, in his view, the  
15      U.S. industry needs Brazilian FCOJ? How can that same  
16      person argue that revocation of an order that applies  
17      to no more than 20 percent of Brazil's production and  
18      none of its exports to the United States would lead to  
19      a resumption of material injury to the U.S. industry?

20              Now, he may have greater flexibility of  
21      intellect than I. It certainly will be interesting to  
22      hear him. However, the U.S. industry, whatever Mr.  
23      Freeman says, says what we say, and that is that  
24      revocation of the order at issue in this proceeding  
25      will have no impact on the U.S. industry or the U.S.



1 market.

2           We have planned a very short presentation  
3 today. In a nutshell, the points we will make are,  
4 first, subject imports are not a factor in the U.S.  
5 market; second, subject imports will not become a  
6 factor in the U.S. market. There are two reasons for  
7 this. First, the major producer subject to the order  
8 is operating at full capacity, and, second, it has  
9 well-established and profitable markets in Asia and in  
10 Europe and has no incentive to switch to the U.S.  
11 market.

12           And, finally, even if there were to be an  
13 increase of some sort in imports and subject imports,  
14 we believe, as Mr. Freeman did a week or so ago, that  
15 it would benefit the U.S. industry for two reasons.  
16 First, the U.S. industry needs the imports for  
17 blending purposes; second, the duty drawback given on  
18 the imports facilitates exports, and the net impact of  
19 the imports would be zero because they would be offset  
20 by an equal amount of exports.

21           That's the summary of what we will say. I'm  
22 interesting in finding out what opponents of  
23 revocation have to say, and we'll respond to them in  
24 the course of our direct testimony. Thank you.

25           CHAIRMAN KOPLAN: Thank you, sir.

1                   Madam Secretary?

2                   MS. ABBOTT: The panel in opposition to the  
3                   revocation will please come forward and be seated.  
4                   The witnesses have been sworn.

5                   (Pause.)

6                   CHAIRMAN KOPLAN: Good morning. Good  
7                   morning, Mr. Freeman. You may proceed.

8                   MR. FREEMAN: Good morning. My name is  
9                   Randal Freeman, and I'm senior vice president of Louis  
10                  Dreyfus Citrus, Inc.

11                  CHAIRMAN KOPLAN: If you could just move  
12                  that microphone closer to you. I think you just  
13                  turned it off, though.

14                  MR. FREEMAN: I'm appearing today as a  
15                  nonparty who opposes the revocation of the antidumping  
16                  order. In my opinion, revoking this existing order  
17                  would eliminate the discipline that has protected the  
18                  domestic industry for the last 18 years. The  
19                  Department of Commerce has also taken this stance in a  
20                  letter to Petitioner's attorney, dated November 22,  
21                  2004.

22                  Revocation would also allow two companies to  
23                  become possibly the only two Brazilian producers who  
24                  could export to the U.S. without dumping duties. This  
25                  would give an unfair advantage to one of my domestic

1 competitors, Southern Gardens Citrus Processing  
2 Corporation, a subsidiary of the United States Sugar  
3 Corporation, which imports from one of these two  
4 Brazilian producers. Let me explain.

5 Louis Dreyfus Citrus is a processor of  
6 orange juice, with plants in Florida which produced  
7 the juice from some 25 million, 90-pound boxes of  
8 oranges last year, 12 percent of what was produced.  
9 We are also an importer of concentrate from Brazil,  
10 which we purchase primarily from our affiliated  
11 company, Queen Brafrutesp. Queen Brafrutesp is the  
12 successor in interest to two companies, Coopracitrus  
13 Industrial Frutesp and Frutropic, S.A., which were  
14 included in the original investigation in this case  
15 but which obtained partial revocation from the  
16 Commerce Department upon showing that they did not  
17 sell FCOJ to the U.S. at prices below fair value for  
18 three consecutive years.

19 Frutesp and Frutropic were not the only  
20 companies that were partially revoked in this manner.  
21 In the years following the issuance of the order, many  
22 of the major producers of orange juice in Brazil also  
23 obtained revocations. To obtain these revocations,  
24 the companies had to not only show that they had not  
25 been dumping for three consecutive years, but they

1       also had to agree that the Department of Commerce  
2       could reinstate the order if there was any evidence  
3       that they had resumed less-than-fair-value sales to  
4       the United States.

5               In the years between those revocations and  
6       now, the threat of reinstatement of dumping orders if  
7       less-than-fair-value sales were resumed has created  
8       price discipline on Brazilian suppliers in the market.  
9       Florida Citrus Mutual, the Petitioner in this case,  
10      told the Commission exactly that in the last sunset  
11      review in this case when it urged the Commission to  
12      keep the order in effect in order to retain the price  
13      discipline.

14             As a domestic producer of FCOJ, we agree  
15      with Mutual's early position. The discipline provided  
16      by the threat of reinstatement has provided  
17      considerable protection to the domestic producers.  
18      Revocation of the order would eliminate that  
19      protection. Therefore, we believe the order should  
20      continue.

21             But there is another, more significant  
22      reason why this order should not be revoked. As  
23      Florida Citrus Mutual has told this Commission, two  
24      Brazilian producers remain subject to the existing  
25      order: Citrovida, a subsidiary of Votorantim Group,

1 the largest industrial group in Brazil; and Branco  
2 Peres Citrus. Citrovida, with current dumping duty  
3 deposits at 15.98 percent, is the only producer in  
4 Brazil that must deposit dumping duties today because  
5 of its history of dumping.

6 On December 27th, Mutual and four domestic  
7 producers, led by Southern Gardens Citrus, filed a new  
8 antidumping petition against FCOJ and not-from-  
9 concentrate orange juice from Brazil. That petition  
10 covered all Brazilian producers of FCOJ except  
11 Citrovida and Branco Peres. The petition specifically  
12 exempted those two companies by name.

13 We also noted there is at least one existing  
14 company which I believe was partially revoked from the  
15 order at issue in this hearing that is nowhere  
16 mentioned in the new petition, and there are other  
17 companies currently under the all-others rate of 1.96  
18 percent from the original determination which are also  
19 not mentioned in the new petition.

20 This new petition is awaiting initiation by  
21 the Commerce Department and a preliminary injury  
22 determination by this Commission, and I realize that  
23 the new investigation is not before the Commission  
24 today. Unfortunately, the two cases are linked. If  
25 the Commission were to find a reasonable indication of

1 injury in the new case and revoke the order in the  
2 review that you are conducting today, it would mean  
3 that Louis Dreyfus Citrus and the other previously  
4 revoked companies would be subject to a new  
5 antidumping investigation and might eventually have to  
6 post bonds and deposit antidumping duties subject to  
7 final liquidation on their imports.

8 Citrovia, however, despite being the only  
9 company currently found to have been dumping, would  
10 have been paying the revocation of the old order and,  
11 since it's explicitly excluded from the new case,  
12 would not have to deposit antidumping duties at all.

13 I have discussed this matter with my  
14 attorneys, and they have advised me that if the  
15 Department revokes the order on Citrovia and Branco  
16 Peres in this review, Commerce Department practice and  
17 United States law would prohibit the petitioners in  
18 the new case from amending their petition to bring  
19 Citrovia and Branco Peres into the new case. Thus,  
20 while every other Brazilian producer would be subject  
21 to the discipline of the antidumping law, those two  
22 companies and possibly others would be exempt.

23 In fact, this realization that Citrovia  
24 would basically be exempt from antidumping duties has  
25 led one of the petitioners in the new investigation, a

1 petitioner in the new investigation, to pull its  
2 support and oppose the petition in the Department of  
3 Commerce's polling questionnaire. It's the subject of  
4 a long article in the Lakeland Ledger this morning.

5 Now, allow me to let you in on what is a  
6 not-very-well-kept secret. The principal U.S.  
7 importer and purchaser of Citrovida's juice is  
8 Southern Gardens. That is the same company that is  
9 leading the filing of the new petition on everyone  
10 else but Citrovida and Branco Peres. If the  
11 Commission were to revoke the existing order in this  
12 review and make a preliminary determination of injury  
13 in the new case, Southern Gardens would be able to  
14 import its juice from Citrovida without any dumping  
15 duties while all other Brazilian sources of juice,  
16 including my affiliate, which has been revoked from  
17 the existing order, would be subject to potential  
18 dumping duties in this new case.

19 This would be an enormous market advantage  
20 for Southern Gardens, which is the reason stated  
21 publicly that the petitioner in the new case opposed  
22 the petition when it was taken to a poll.

23 Virtually all U.S. processors, including my  
24 operation in Florida, require some amount of imported  
25 Brazilian juice to blend with domestic product in

1 order to satisfy market requirements for color and  
2 quality. The need for imported juice will be greater  
3 in the coming year because of the huge crop shortfall  
4 in Florida. If Southern Gardens can import from  
5 Citrovida in Brazil without dumping duties while  
6 everyone else must pay bonds or deposit duties,  
7 Southern Gardens will be uniquely favored.

8 I do not think that it is too much to  
9 conclude that Southern Gardens has deliberately sought  
10 to manipulate the dumping law to obtain just this  
11 commercial advantage, but the Commission should not go  
12 along with this attempt. The dumping law is meant to  
13 cover imports of a product from a country and not to  
14 exempt or favor specific companies unless those  
15 companies have been found not be dumping.

16 Southern Gardens would turn this law on its  
17 head, exempting from dumping duties the one company  
18 that has been found to be dumping while making almost  
19 all other Brazilian companies subject to dumping  
20 duties.

21 The only way that the Commission can avoid  
22 being part of this cynical manipulation of the dumping  
23 laws is to keep the order in effect on Citrovida and  
24 Branco Peres. The Commission should not revoke the  
25 existing order in this review.



1 CHAIRMAN KOPLAN: Does that conclude your  
2 presentation?

3 MR. FREEMAN: That does.

4 CHAIRMAN KOPLAN: Thank you very much.  
5 We will begin the questioning with  
6 Commissioner Miller.

7 COMMISSIONER MILLER: Thank you, Mr.  
8 Chairman. Lucky me.

9 Mr. Freeman, your statement is interesting  
10 in terms of understanding the unusual procedural  
11 posture of the case. It's going to take me a little  
12 while to sort through what to make of it all.

13 Your comments about Citrovida supplying  
14 Southern Gardens, just so I understand one thing, are  
15 there not other U.S. processors and producers that buy  
16 from Citrovida? I mean, why are there not other U.S.  
17 producers and processors that apparently share your  
18 point of view on the case and are opposing revocation?  
19 That's what I'm trying to understand.

20 MR. FREEMAN: There is a long history to  
21 this. Initially, back in November, my attorney  
22 pointed out to me the risk of this structure  
23 happening. I wrote a letter requesting to appear here  
24 today just in case it did. And a week ago, in a  
25 telephone conversation related for me, and it was

1       hearsay, the Petitioner who withdrew from supporting  
2       the case told me that he had been told initially by  
3       the attorneys for the Petitioner that dragging  
4       Citrovita in after the sunset review was something  
5       that the Department of Commerce said we would work  
6       with you on.

7               What I suspect was that the Department of  
8       Commerce said to the Petitioner, If you can find a  
9       legal way to do it, we won't oppose it. That casual  
10      way of slipping them in went to, finally, the  
11      admission that they would be plowing new ground.

12             The procedural thing, according to my  
13      attorney, and I paid him a lot of money for this  
14      advice and pressed him hard as you possibly can press  
15      an attorney, said, No way. They have been  
16      specifically excluded from the scope of the new  
17      petition.

18             Now, to answer the other question about  
19      relationships, Southern Gardens and Citrovita have  
20      what has been characterized to me by a senior employee  
21      of Southern Gardens a "partnership." It's common  
22      industry knowledge that that partnership was entered  
23      into about five years ago, -- don't hold me to that --  
24      and it involves a big sale program to the Kroger  
25      supermarket chain.

1                   In the 12 months ended June 2004, which is  
2                   what the Petitioners wish to have a period of  
3                   investigation, Citrovida sent product to the United  
4                   States in a quantity twice what Cargill and Dreyfus  
5                   did together. They shipped 17,000 tons, and Cargill  
6                   and Dreyfus shipped 15,000 tons in that year.

7                   COMMISSIONER MILLER: What year is that?

8                   MR. FREEMAN: The 12 months ending June 30,  
9                   2004.

10                  Now, I suspect that Mr. Greenwald will make  
11                  the point that technically Citrovida sells no product  
12                  in the United States, which technically is true.  
13                  However, there is a relationship that is well  
14                  documented in the files between Montecitrus,  
15                  Citrovida, and Votorantim International. The product  
16                  is tolled by Montecitrus in the Citrovida factory.  
17                  The product is then sold, CNF, to Votorantim  
18                  International in Newark, Delaware, and then on sold to  
19                  Southern Gardens and/or Southern Gardens' customers.  
20                  That avoids dumping duties on the product. However,  
21                  Citrovida perceives in Brazil that they send 10  
22                  percent of their production to the United States.

23                  There was an interview in a newspaper in Sao  
24                  Paulo, of which I have a free translation, quoting a  
25                  man that said precisely that. Contrary to the

1 evidence about Citrovida also having a high-powered  
2 attorney, he said something like the antidumping case  
3 that is beyond us -- we are already the only company  
4 to pay a tax on dumping for the juice sent to the  
5 United States, and that market is not our main one.  
6 Therefore, it receives only 10 percent of our  
7 exportations, said the executive.

8 So what happens, then, is Montecitrus has  
9 been named in the new petition.

10 COMMISSIONER MILLER: And Montecitrus is one  
11 of the companies that was excluded from the old --

12 MR. FREEMAN: Montecitrus is one of the  
13 companies that initially received the all-others rate  
14 in the initial investigation and then subsequently was  
15 partially revoked by proving three consecutive years  
16 of not dumping.

17 COMMISSIONER MILLER: And you say they toll  
18 Citrovida.

19 MR. FREEMAN: No, no. They toll for  
20 themselves.

21 COMMISSIONER MILLER: Okay.

22 MR. FREEMAN: Montecitrus is a group of  
23 growers, a very powerful, very smart group of growers,  
24 who grow themselves and then have created a group and  
25 have leveraged themselves with processors in Brazil

1 from Day One, Cargill for years, by saying, We control  
2 this many oranges, and unless you will toll process  
3 for us at a favorable rate and allow us to assist in  
4 marketing your orange juice, we will build our own  
5 factory. And so the product is tolled in the  
6 Citrovia factory owned by Montecitrus --

7 COMMISSIONER MILLER: The other way around.

8 MR. FREEMAN: -- and then sold to  
9 Votorantim.

10 COMMISSIONER MILLER: Okay.

11 MR. FREEMAN: Florida Citrus Mutual has  
12 screamed about this in a number of presentations.  
13 Citrovia in Brazil perceives that they send 10  
14 percent of their product to North America, and the  
15 United States believes that Citrovia brings none of  
16 it in because it comes in via Montecitrus at a zero  
17 deposit rate.

18 COMMISSIONER MILLER: Can you share that  
19 article with us that you were just referencing, if you  
20 haven't done so already?

21 MR. FREEMAN: I have not done so already,  
22 but I would be --

23 COMMISSIONER MILLER: If you could submit it  
24 to the Commission in a post-hearing submission --  
25 today actually so that counsel for the other side can

1 see it as well.

2 MR. FREEMAN: Okay.

3 COMMISSIONER MILLER: Okay. Let me ask you,  
4 prior to the imposition of this antidumping order, I  
5 assume you were familiar or involved in the case, or  
6 were you, during the original imposition? It's been a  
7 while now, so perhaps not. (Laughter.)

8 MR. FREEMAN: We, the Dreyfus group, entered  
9 the frozen concentrated orange juice industry in May  
10 of 1988. We did so with the purchase of a small  
11 processing factory in Sao Paulo in Brazil. At that  
12 time, that factory had been assigned the all-others  
13 rate because it was not investigated in the  
14 preliminary or final investigation of the case that is  
15 the subject of this hearing, and what I did was  
16 determine that we probably would want to ship product  
17 to the United States when it made sense and when the  
18 U.S. was short; and, therefore, I spent three years  
19 making sure that I documented, dotted all my "i's" and  
20 crossed all my "t's," and we went through three  
21 consecutive investigations under the Department of  
22 Commerce and were found to have a zero deposit rate.  
23 I signed a letter in 1994 that said, if dumping  
24 resumes, I agree to the reimposition of dumping  
25 duties.

1                   That's our history. We acquired the company  
2                   after they already had the rate, and then I moved  
3                   forward with it.

4                   COMMISSIONER MILLER: Okay. What I really  
5                   was aiming at was asking you a little bit about  
6                   Citrovita's presence in the market prior to imposition  
7                   of the antidumping order. I don't know if that's  
8                   something -- my light is on, so maybe I can come back  
9                   to it. I'm not sure if you're familiar with it.  
10                  Given what you've just described, you may not be that  
11                  familiar except from what you've learned during the  
12                  course of your involvement in the industry since then.

13                  MR. FREEMAN: Mr. Scabbia would be in a much  
14                  better position to tell the history of Citrovita.

15                  COMMISSIONER MILLER: Okay. All right. I  
16                  appreciate your answers to the question. You've given  
17                  me a lot to think about as my colleagues ask a few  
18                  questions. Thank you.

19                  CHAIRMAN KOPLAN: Thank you, Commissioner.

20                  Commissioner Hillman?

21                  COMMISSIONER HILLMAN: Thank you. I  
22                  appreciate your taking the time to be with us this  
23                  morning.

24                  Maybe just to follow up just a little bit to  
25                  make sure I understand this relationship, you're

1 saying Citrovida toll produces product. They are  
2 doing the processing for the oranges that have been  
3 grown by Montecitrus. Is that correct?

4 MR. FREEMAN: Yes.

5 COMMISSIONER HILLMAN: Okay. So when they  
6 are sending it to the U.S., why is it not considered a  
7 product of Citrovida? In other words, you're saying  
8 it's not being counted as a product coming from  
9 Citrovida. You're saying it's being counted for  
10 customs purposes as a product of Montecitrus.

11 MR. FREEMAN: Montecitrus.

12 COMMISSIONER HILLMAN: Okay. Why is that?

13 MR. FREEMAN: My daddy always told me the  
14 devil is in the details. The law is a screwy law, and  
15 it provides that product which is tolled -- there is a  
16 specific exemption in the law, or so my lawyers say,  
17 that that is a product of Montecitrus.

18 COMMISSIONER HILLMAN: Because they have  
19 titled to the --

20 MR. FREEMAN: They own the oranges on the  
21 way into the factory, they own the juice on the way  
22 out of the factory, and then they sell it to  
23 Votorantim --

24 COMMISSIONER HILLMAN: I just wanted to make  
25 sure I understood that that's what's happening. Okay.



1 All right.

2 Then, on this issue of the relationship  
3 between Citrovida and Southern Gardens, why is it the  
4 case that Citrovida, again, if they were to be left,  
5 as you're describing it, as the only one not subject  
6 to an order, if we were to revoke and then turn around  
7 and go affirmative on everybody else in a new case,  
8 why is it that it would be this exclusive relationship  
9 with Southern Gardens? Again, if they have got free  
10 rein in the U.S. market, and nobody else does, why  
11 would it make sense for them to sell only to or  
12 through Southern Gardens?

13 MR. FREEMAN: It might not. I will concede  
14 that. It would give them an enormous advantage to my  
15 affiliate company in Brazil because they would, by  
16 definition, have whatever, on a cash flow basis,  
17 whatever the difference between their rate of zero and  
18 any rate that were to be found would be.

19 I do not know the formal relationship, if  
20 any, between Votorantim, Citrovida, and U.S. Sugar,  
21 Southern Gardens. I don't know if there is one.  
22 "Partnership" is a loose word that is thrown around  
23 rather casually. However, the relationship exists,  
24 and relationships in the citrus business are things  
25 that last for a long time.

1                   The other thing that I would observe is that  
2                   Citrovita's infrastructure in the United States is  
3                   nonexistent. They do not have a factor that produces  
4                   oranges and own tanks that Citrasuco, Catrale, and  
5                   ourselves do.

6                   COMMISSIONER HILLMAN: They do not have them  
7                   here in the U.S.

8                   MR. FREEMAN: No, they don't.

9                   COMMISSIONER HILLMAN: Okay. All right.  
10                  Now, how many other producers -- you've focused a lot  
11                  of your testimony on Citrovita. Are there others that  
12                  are subject to this order but that are not in the new  
13                  petition, and what percentage of the Brazilian  
14                  production would they account for?

15                  MR. FREEMAN: I'm not sure I understand -- I  
16                  understand where you're going with the question, but  
17                  I'm not sure I understand about how you asked it.

18                  In the new petition, what it says are this  
19                  petition excludes companies currently -- in one place  
20                  it says, a class of companies that are currently under  
21                  the existing order. Well, I would argue that I'm one  
22                  of those. But then it goes on to name specifically  
23                  Montecitrus and Branco Peres. I believe there is one  
24                  other company named Bass Citrus that has a deposit  
25                  rate, but I'm not 100-percent sure of that.

1 Citrovida is the third largest in Brazil.  
2 It has just announce enormous expansion plans. They  
3 will be processing probably twice what my affiliate  
4 will be, if this article is true, and the article is  
5 true. It was a press release by them.

6 So Catrale is the largest, Citrasuco is the  
7 second largest, Citrovida is third, we are fourth, and  
8 there are probably, in all of Brazil, not just Sao  
9 Paulo state, a dozen other companies that collectively  
10 would manufacture an estimate that I would probably  
11 consider proprietary but would be willing to put on  
12 the record. We have the numbers put together, as far  
13 as our estimates, and I will provide them to the  
14 Commission. I don't remember them right now.

15 COMMISSIONER HILLMAN: Okay. I would  
16 appreciate that. If there are numbers that could be  
17 put on the record, I think that would be helpful.

18 A couple of other issues. You mentioned  
19 that the order is necessary to maintain price  
20 discipline on the remaining subject producers, and  
21 yet, if I look just at our pricing data, prices have  
22 pretty steadily declined over the past several years.  
23 So I'm trying to understand, is it your sense that  
24 they would be worse in the absence of this price  
25 discipline that you're suggesting is occurring? How

1 do I square the notion that there is this strong price  
2 discipline from Brazil, and yet the prices are going  
3 down so much?

4 MR. FREEMAN: The cause effect is putting  
5 the cart before the horse. The orange juice prices in  
6 the United States are a function of primarily two  
7 things: the size of the Florida crop and the  
8 inventory overhang from the previous crop, what we  
9 call the "carryout," as it intermixes with demand.  
10 Where you can show price discipline, as it were, is in  
11 the behavior of my company and the behavior of Cargill  
12 where, in the last two years -- Cargill and I will be  
13 big importers when the U.S. needs juice, and we will  
14 be small importers or net exporters when the U.S.  
15 doesn't need juice.

16 The U.S. went from producing -- Florida  
17 produced, in the last year, 108 percent, 108 percent,  
18 of what the U.S. needed quantitatively. So the  
19 relationship between import prices and domestic juice  
20 prices is one that doesn't exist, certainly not in the  
21 short term. High prices will pull product. Low  
22 prices will make product leave the United States.

23 The reason why product that was manufactured  
24 in Citrovia's plant and tolled by Montecitrus was  
25 double what Cargill and we did in that year was

1       because they ship a flat number. Cargill and I will  
2       export and only bring in what we need to blend for  
3       quality when Florida has got too much juice. So the  
4       fact that import prices have gone down means they are  
5       following domestic prices, not the other way around.

6               COMMISSIONER HILLMAN: All right. Now, Mr.  
7       Greenwald stated in his opening remarks that we should  
8       not expect a significant volume from Citrovita in the  
9       absence of the order, in part because they have these  
10      relationships in Europe and Asia and other places, and  
11      I inferred from his testimony that, in part, that's  
12      because the pricing situation is not such that the  
13      U.S. is going to be a big draw in terms of having  
14      higher prices than the rest of these other markets.  
15      Can you comment on that?

16             MR. FREEMAN: I can comment in the following  
17      ways. In the same article, the purchase of Sucoricco,  
18      which was one of those small companies that was on the  
19      list, which Citrovita just announced they bought  
20      another juice company, was part of a \$130 million U.S.  
21      investment. The answer is they are going to expand  
22      their production and buy other companies in Brazil.

23             COMMISSIONER HILLMAN: And sell that product  
24      where?

25             MR. FREEMAN: Wherever the market wants it,

1       which, in years of short crops -- the United States  
2       usually doesn't make enough orange juice for domestic  
3       consumption. That shortfall has been as much as 50  
4       percent of domestic consumption in freeze-ravaged  
5       years back in the eighties. The industry came back  
6       and has now produced 108 percent last year.

7               This year, we had three hurricanes that went  
8       through the state in the summer, and the production in  
9       Florida went from a USDA estimate in October of 2003  
10      of 252 million boxes last year to an estimate that was  
11      released -- the January estimate for the current crop  
12      is 162. That 100 million boxes needs to be found  
13      somewhere somehow.

14             COMMISSIONER HILLMAN: I appreciate those  
15      comments. Thank you.

16             CHAIRMAN KOPLAN: Thank you, Commissioner.  
17             Commissioner Lane?

18             COMMISSIONER LANE: Good morning, Mr.  
19      Freeman.

20             MR. FREEMAN: Good morning.

21             COMMISSIONER LANE: I have to confess that I  
22      like orange juice, and I drink a lot of it, but I'm  
23      somewhat confused by this proceeding today, so you're  
24      going to have to bear with me when I ask a few  
25      questions that you may think are stupid, and maybe

1 we'll just blame it on the fact that I think this room  
2 is too cold, and it's affecting my thinking, but --

3 MR. FREEMAN: It's a lot warmer than it was  
4 a fortnight ago.

5 COMMISSIONER LANE: Okay. Why isn't the  
6 domestic industry in here fighting for the  
7 continuation of this order?

8 MR. FREEMAN: I would argue that processing  
9 12 and a half percent, 15 percent, of Florida's round  
10 oranges every year, being the largest packager in the  
11 country of private-label, frozen concentrated orange  
12 juice, the kind you buy and mix with three parts of  
13 water at home, and employing all of those people in  
14 Florida, and a capital investment in Florida in excess  
15 of \$55 million makes me part of the domestic industry.

16 Now, as to why the other cowboys aren't  
17 here, they seem more interested in filing a new case,  
18 and you can talk about those motives all you want.  
19 The conspiracy theory in me says the reason they  
20 aren't here is this has been cleverly structured. No  
21 matter how it ends up, Southern Gardens, a Petitioner,  
22 and Citrovida, an orange juice processor in Brazil,  
23 have dumping-free access to the States in one way or  
24 another. Let's say you keep this on. You keep it  
25 going forward. Citrovida, the product comes from

1 Montecitrus. Let's say you kill this, and you go  
2 forward, and there are no margins found, then  
3 everybody wins.

4           The point is this: Montecitrus extracts its  
5 pound of flesh from Citrovida to fulfill that function  
6 for them, and Citrovida would desperately like to be  
7 able to have its own duty-free access to the United  
8 States. There are two ways to do it. One of them is  
9 to import some product, go through three consecutive  
10 annual reviews, prove to the Department of Commerce  
11 that you are not guilty of dumping, and you get a  
12 partial revocation, sign a letter that you agree to be  
13 put under the order going forward, and everything is  
14 hunky dory. That takes a lot of effort, not  
15 insubstantial legal fees, and a lot of work.

16           The other way is to structure a process so  
17 as to gain duty-free access. So part of me says that  
18 Florida Citrus Mutual needs to be seen by the growers  
19 to be doing something because prices are low. Andy  
20 Levine, the executive director, needs to be seen to do  
21 something. It moralizes it. That's a big part of why  
22 they are, you know, they are off on a new one.

23           The conspiracy theorist in me says Southern  
24 Gardens is driving the bus.

25           COMMISSIONER LANE: Okay. Let's go to



1 another area. Explain to me a little bit more about  
2 Louis Dreyfus itself. You're a processor. What brand  
3 do you sell under?

4 MR. FREEMAN: The only two proprietary  
5 brands we sell are one that I grew up drinking in  
6 Rupert, Idaho, called Wholesun and one that we market  
7 in the upper Midwest called -- we have so many defunct  
8 private brands that I can't remember the other one.  
9 It will come to me in a minute. We have two of those.

10 Our single biggest customer is Wal-Mart's  
11 private label. We package all of Wal-Mart's frozen.  
12 We package Costco's frozen. We package Kroger's  
13 frozen. We package Giant here in Washington. I think  
14 we have Albertson's as well today, their store brands.

15 COMMISSIONER LANE: Now, I believe you said  
16 that you also import from Brazil.

17 MR. FREEMAN: Yes. The other one is  
18 Sunshine State.

19 COMMISSIONER LANE: Okay.

20 MR. FREEMAN: Yes, we do.

21 COMMISSIONER LANE: How much do you import  
22 from Brazil, percentage-wise, roughly, if you're  
23 allowed to talk about that?

24 MR. FREEMAN: Percentage-wise of what  
25 percentage? I'm not being evasive.

1                   First of all, in our business in Florida, in  
2                   the business in the United States, we do a number of  
3                   things. We process Florida oranges. We are a market  
4                   maker and a merchant in frozen concentrated orange  
5                   juice. We buy and sell the stuff. We are often the  
6                   buyer of last resort, i.e., the people that companies  
7                   go to when they can find no one else to buy their  
8                   surplus. We bought probably 7 or 8 percent of what  
9                   Southern Gardens made last year into concentrate  
10                  because they couldn't sell it; they made too much. So  
11                  we bought it, and I own it still.

12                  So as a percentage of what? When the U.S.  
13                  market is short and prices are high, I will import as  
14                  much as, I think, 25 or 30,000 metric tons, which is  
15                  25 percent of my annual production. Okay? In the  
16                  last year and a half, eight and a half million pounds  
17                  solid, which is 6,000 tons, which I brought in for  
18                  quality purposes, and I exported probably 20 million  
19                  pounds solid.

20                  So what I will bring and pull, it will  
21                  fluctuate wildly depending on what the market is  
22                  telling me to do.

23                  COMMISSIONER LANE: You also said that the  
24                  industry needs, or somebody said, needs oranges from  
25                  Brazil for blending purposes in case you need to do

1 quality and color, I think. Explain to me that  
2 concept.

3 MR. FREEMAN: Okay. The best oranges for  
4 orange juice, far and away the best, are Valencias.  
5 They are the juiciest.

6 COMMISSIONER LANE: Are they round?

7 MR. FREEMAN: Yes, they are round.

8 COMMISSIONER LANE: Okay.

9 MR. FREEMAN: They are the best ones.  
10 Valencia oranges take longer to mature and do not  
11 mature until February in a year. Florida was subject  
12 to terrible freezes in the eighties. Florida's  
13 production was halved in the 1980's, which is the  
14 reason there is an industry in Brazil. They planted  
15 varieties of oranges which mature much earlier. They  
16 are called Hamlins, early-mid varieties. Those  
17 oranges, when you look at the juice that comes out of  
18 them, it's better characterized not as orange juice  
19 but as yellow juice.

20 Brazil has almost exclusive Valencia orange  
21 groves. So what you do is you blend the Valencia-type  
22 oranges from Brazil with the Hamlin variety in  
23 Florida, which is roughly 60 percent of the crop, so  
24 as to make what they call "94 score," which is the  
25 minimum color requirement. If you took Florida's

1 production as a whole, it wouldn't make 94 score  
2 because they are short of color. You can't make it.

3 Even when the United States is enormously  
4 surplus orange juice by its own production, there are  
5 other reasons that we still, as a country, need to  
6 import Brazilian juice. Viscosity, which means how  
7 well it flows; the Brazilian juice is less viscous,  
8 flows more freely. For the dispensers where you stick  
9 a little cup under it, and it blends it together, is  
10 very important, so you have a big Brazilian component  
11 in that part of it.

12 And the other reason that Brazilian juice is  
13 needed in this country is that the duty on orange  
14 juice, the standard duty, is specific at 30 cents-a-  
15 pound solid, arguably. It's 9.25 cents a single-  
16 strength liter, which works to 30 cents-a-pound solid,  
17 which is the number that everybody talks about.  
18 Thirty cents-a-pound solid is an enormous percentage  
19 in low-priced environments of the value of the  
20 merchandise, and so in order to export to the world  
21 market, you have to utilize the duty-drawback program.

22 COMMISSIONER LANE: We'll get to that my  
23 next round on the duty drawback. Thank you.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.

25 Commissioner Pearson?

1                   COMMISSIONER PEARSON: Thank you, Mr.  
2                   Chairman. Welcome, Mr. Freeman.

3                   I have listened with interest. Okay? What  
4                   I'm trying to understand, I think you're saying that  
5                   the existing order is having relatively little effect  
6                   on Citrovida because it is using its facility to toll  
7                   process quite a bit of juice from oranges owned by  
8                   Montecitrus, if I've got it correct, and in that case,  
9                   what's the practical effect of keeping this order in  
10                  place? What is this order really doing to Citrovida  
11                  now that would be any different in a substantive way  
12                  than if the order is revoked?

13                 MR. FREEMAN: Let's imagine scenarios where  
14                 we have another freeze like '89. The markets go  
15                 crazy, and there is a falling out between Montecitrus  
16                 and Citrovida. They are separate companies.

17                 COMMISSIONER PEARSON: You're saying,  
18                 hypothetically, there could be a falling out?

19                 MR. FREEMAN: Yeah. Montecitrus has fallen  
20                 out with Cargill before. Montecitrus falls out with  
21                 companies in the past. And so Citrovida has a 16  
22                 percent rate, 15.98 percent rate, that they are  
23                 subject to right now as their deposit rate relative to  
24                 the majority of the industry that has a zero deposit  
25                 rate, and there's a few with a 1.96 percent deposit

1 rate.

2 So on a comparative basis, if they get rid  
3 of this, they are better off, no matter what happens.  
4 They are sufficiently concerned that they have  
5 retained very competent, very famous in the trade  
6 world legislation, and very expensive counsel to try  
7 to get them out. They consider it important to get  
8 out, and I suspect it's because Montecitrus is not a  
9 sure way to gain access forever, and Montecitrus  
10 extracts a pound of flesh for providing the service.

11 COMMISSIONER PEARSON: Okay. But toll  
12 processing is really quite common in foods and  
13 agricultural commodities. Is there something about  
14 this particular tolling arrangement that causes  
15 particular concern? Is there something that's  
16 troubling or insidious about it?

17 MR. FREEMAN: On the basis of a level  
18 playing field, there is no reason that they shouldn't  
19 have to go through what I do, which is three  
20 consecutive reviews, so that's a fairness issue. So  
21 is that insidious? It approaches it in my mind.

22 No, there is not. Florida Citrus Mutual has  
23 gone ballistic about it a couple of times because they  
24 think that it is a way Citrovia is -- they would use  
25 the word "evade," which carries bad connotations -- I

1 would use the word "avoid" -- the present law.

2 COMMISSIONER PEARSON: So based on pricing  
3 in the marketplaces, as you see it, has Citrovida been  
4 dumping either any juice that it might have brought in  
5 for its own account or the juice that it's tolling for  
6 Montecitrus? Is there an element of dumping there, or  
7 is it being fairly traded, as best you know?

8 MR. FREEMAN: I do not know. Citrovida  
9 doesn't bring any juice to North America at all. They  
10 are not on the list of companies that have imported,  
11 to the best of my knowledge and belief, and I think  
12 Mr. Greenwald made that statement in his opening  
13 remarks. He said Citrovida sends no juice here. I  
14 have no way of knowing it. I would suggest looking at  
15 Southern Gardens's questionnaire.

16 COMMISSIONER PEARSON: So, then, based on  
17 your understanding of the economics of processing  
18 orange juice in Brazil, if Citrovida had chosen to  
19 make the effort over a three-year period to  
20 demonstrate that it wasn't dumping, it probably could  
21 have proven that or not?

22 MR. FREEMAN: I think it tried. I think the  
23 rate that was achieved was the result of an attempt to  
24 do that, but I'm not sure. They had an all-others  
25 rate of 1.96 percent.

1 I'll tell you how you can find out.  
2 Determine who requested the annual review that gave  
3 Citrovida the 15.98 percent rate. If it was the  
4 domestic industry, that's one thing. If it was  
5 Citrovida's attorneys, that's another thing. In the  
6 latter case, it means that Citrovida actually made an  
7 attempt to do it and failed.

8 COMMISSIONER PEARSON: Given that this  
9 particular order has been in effect for a number of  
10 years, have Brazilian firms, or we could speak  
11 specifically about the Dreyfus affiliate, if you would  
12 like, but have these firms adopted accounting systems  
13 that allow them to know, on any individual export sale  
14 to the United States, whether or not they are selling  
15 at a dumped price?

16 MR. FREEMAN: Basically, yes. We keep track  
17 of what the numbers are to make sure that we don't  
18 dump. I know that Citrasuco does the same. Our  
19 relationship with Wilkie Farr & Gallagher continues  
20 because my attorneys keep us abreast of changes in  
21 practices and properties, and we pay attention to  
22 pricing. Besides that, dumping is an uneconomic  
23 activity, when all is said and done. I mean, why  
24 would you sell in the United States when you can sell  
25 at a better price somewhere else, take the stuff from



1 the United States and sell it over there?

2 COMMISSIONER PEARSON: I understand the  
3 economic rationale.

4 So the efforts to develop accounting systems  
5 that would provide that information; would that be  
6 relevant to the new case that's not in front of us  
7 today but with which you are familiar?

8 MR. FREEMAN: I suspect so. I have, from my  
9 point of view, and I'm here as a domestic producer and  
10 packager of orange juice with an affiliated company,  
11 my affiliated company will not be allowed to be  
12 investigated by the Department of Commerce because we  
13 didn't bring stuff to the United States in sufficient  
14 quantities during the period of investigation. The  
15 Department of Commerce goes until they get 60 or 70  
16 percent of the companies. So they are going to go,  
17 and they are going to get Catrale, they are going to  
18 get Citrasuco, and they might get Montecitrus. I'm  
19 not sure -- probably just the two. They will go and  
20 do an investigation. I will be assigned the average  
21 of the margins they find.

22 So let's imagine that in the investigation  
23 Catrale gets a zero, Citrasuco gets a zero, and  
24 Montecitrus gets a 30. My margin is 30 because that's  
25 the average of the margins that were found. I don't

1 get to walk in and say, Here is what I did. I have to  
2 go through the three-year-review process to take  
3 whatever deposit rate I am assigned back down to zero.

4 COMMISSIONER PEARSON: So if I understand  
5 correctly, you're saying that under Commerce's  
6 procedures, Dreyfus would be particularly  
7 disadvantaged just simply because you don't have a  
8 record of importing during the period of  
9 investigation.

10 MR. FREEMAN: Not in sufficient quantities,  
11 no. So what happens is I get penalized for behaving  
12 economically and adhering to the dumping law.

13 COMMISSIONER PEARSON: Okay. Let me shift a  
14 bit to a discussion of how pricing is done in the  
15 marketplace. There is an active futures market for  
16 frozen concentrated orange juice in New York, I  
17 believe. Are there other futures markets around the  
18 world?

19 MR. FREEMAN: That's the only one.

20 COMMISSIONER PEARSON: Okay. Can you  
21 explain what role it plays in pricing juice in the  
22 United States and in Brazil, or maybe it doesn't play  
23 a role in Brazil?

24 MR. FREEMAN: In the United States, it is  
25 the only one. It's the one that trades daily. It's

1 the one you can see -- it's price discovery there. A  
2 very, very large percentage of the domestic juice, I'm  
3 talking about, that is sold in the United States is  
4 priced either by formal contractual futures contract  
5 arrangements, which are referred to as "EFPs,"  
6 exchange of futures for physicals, or "PAF," -- they  
7 use EFPs in the orange juice market, but in other  
8 markets, against actuals where you use the futures  
9 market as a pricing vehicle -- or by informal  
10 reference to the futures market.

11 So when you ask what the price of orange  
12 juice is, it's almost like when you ask what the price  
13 of soybeans is, five over the board. And that market  
14 for the bulk product that's sold, I would guess,  
15 prices certainly a lot more than half of all of the  
16 juice that's sold in bulk, less than 80 percent,  
17 somewhere around there.

18 COMMISSIONER PEARSON: My time has expired,  
19 so I may have to come back to this.

20 MR. FREEMAN: Okay.

21 COMMISSIONER PEARSON: Thank you.

22 CHAIRMAN KOPLAN: Thank you, Commissioner  
23 Pearson.

24 I want to thank you for your testimony.  
25 It's been very enlightening for me. Let me begin this

1 way. By way of background, please keep in mind that  
2 the task I'm faced with is to decide whether  
3 revocation of the order currently in place in this  
4 second sunset review would be likely to lead to a  
5 continuation or recurrence of material injury within a  
6 reasonably foreseeable time.

7           You noted in your direct presentation that  
8 Citrovida and Branco Peres, the exporters of frozen  
9 concentrate orange juice for manufacturing covered by  
10 this review, are specifically excluded from the new  
11 investigation, No. 731-TA-1089, at which you testified  
12 on January 19th. Mr. Greenwald stated that those  
13 companies currently represent about 20 percent of  
14 Brazilian production and no imports to the U.S., and  
15 you have acknowledged that they are not importing to  
16 the U.S.

17           I recognize, because you're a nonparty, that  
18 neither you nor Ms. Griffin have access to business  
19 proprietary information filed in this sunset review.  
20 So what I will do, therefore, is walk you through some  
21 questions based on assertions, public in nature, that  
22 are contained in Mr. Greenwald's prehearing brief and  
23 alluded to in his opening statement and ask you to  
24 comment on them for me.

25           First, Mr. Greenwald alleges that Citrovida

1 does not have the capacity to become, or the interest  
2 in becoming, a major supplier to the U.S. market, and  
3 Branco Peres is so small that it could not, under any  
4 circumstances, supply a material part of the U.S.  
5 demand. Do you have any information that would  
6 contradict that assertion?

7 MR. FREEMAN: As to the first one,  
8 Votorantim, which owns Citrovia, lock, stock and  
9 barrel, is the largest, most prosperous industrial  
10 organization in all of Brazil. They can do pretty  
11 much what they want to do. They've announced a  
12 purchase of Sucorico. They believe that product from  
13 their factory comes to the United States. That  
14 relationship exists. The article that I alluded to  
15 before and will provide you talks to that. They have  
16 the ability to come. And plans change. If the U.S.  
17 market all of a sudden needs a lot of juice and starts  
18 bidding a very high price, product will come.

19 As to the second one, Branco Peres being a  
20 very small organization, yes, Branco Peres at present  
21 are. However, imagine an environment where Branco  
22 Peres had dumping duty-free access and in the  
23 preliminary determination Commerce found 10 percent  
24 for Citrasuco, 20 percent for Catrale, 15 percent  
25 margins for me, and all of a sudden Branco Peres would

1 be in a position to enormously grow in size, either by  
2 cold processing or buying back the plant they sold to  
3 Caltrale or doing something else. I mean, the point  
4 is that just because they are at present incapable of  
5 doing that does not mean that next week they could not  
6 become.

7 CHAIRMAN KOPLAN: But you do not dispute  
8 that under the current situation, as things stand now,  
9 during the period of our investigation, you don't  
10 dispute Mr. Greenwald's allegation in terms of the  
11 current picture.

12 MR. FREEMAN: I may have misunderstood the  
13 question. You said that he said they have no interest  
14 in becoming anything in the United States.

15 CHAIRMAN KOPLAN: Right. He also said they  
16 don't have the capacity to become at present.

17 MR. FREEMAN: Was that pre or post Sudo?

18 CHAIRMAN KOPLAN: Well, let me do it this  
19 way. Let me see if I can help you.

20 He alleges that Citrovida operates at 100  
21 percent of its daily capacity as long as suitable  
22 fruit is available for processing.

23 My question is the same: do you have any  
24 information that contradicts his argument that  
25 Citrovida does not have excess capacity at this time?

1 MR. FREEMAN: No.

2 CHAIRMAN KOPLAN: Okay. All right. Thank  
3 you.

4 He also states that most -- and this is a  
5 follow-up to Commissioner Pearson's last question --  
6 he also states that most frozen concentrated orange  
7 juice is sold on a spot or short-term contract basis  
8 with prices in the futures market often used as a  
9 point of reference.

10 Do you agree with that?

11 MR. FREEMAN: How short is short-term?

12 CHAIRMAN KOPLAN: How short is short-term?  
13 I would say six months to a year.

14 MR. FREEMAN: No, I do not.

15 CHAIRMAN KOPLAN: You do not?

16 MR. FREEMAN: I do not agree with that.

17 CHAIRMAN KOPLAN: Tell me what your response  
18 is.

19 MR. FREEMAN: At least annual. Most  
20 contracts are at least a year in duration to supply  
21 bulk concentrate to the universe of customers that  
22 buy.

23 CHAIRMAN KOPLAN: Thank you.

24 He then goes on to state that frozen  
25 concentrated orange juice prices are dictated by

1 changes in aggregate supply and demand.

2 In your experience, is that correct?

3 MR. FREEMAN: No.

4 CHAIRMAN KOPLAN: What has been your  
5 experience?

6 MR. FREEMAN: My experience is as follows.  
7 The prices are a function of the interaction of supply  
8 and demand, but they're more importantly a function of  
9 whether or not the United States is a net importer or  
10 a net exporter.

11 When the United States makes more juice than  
12 it can consume, it loses the protection of the tariff,  
13 which is cents a pound solid, and the price in the  
14 United States goes to the world price. It's a  
15 function of aggregate demand within the United States  
16 and maybe Costa Rica and Belize because they come  
17 duty-free and Mexico because they come at 50 percent  
18 of duty, as to whether or not this economic zone that  
19 is normally protected by a tariff has to go to world  
20 price; i.e., do they make more than they absolutely  
21 are going to consume and, if they do, they're in  
22 trouble.

23 CHAIRMAN KOPLAN: Thank you. I appreciate  
24 your answers to those questions. I have nothing  
25 further at this time.



1 I'll turn to Commissioner Miller.

2 COMMISSIONER MILLER: Mr. Freeman, you're  
3 not an interested party in this case because you  
4 didn't file to be an interested party at the point  
5 of -- I just want to understand your position. You've  
6 clearly stated you're a domestic producer, I think  
7 that's clear to me from the record we have before us.

8 MR. FREEMAN: Right.

9 COMMISSIONER MILLER: But you didn't file as  
10 an interested party. You are a domestic producer, you  
11 definitely participated and responded to our  
12 questionnaires, you just chose not to be an interested  
13 party? I just want to understand the history of that.

14 MR. FREEMAN: It was a bad decision on my  
15 part. I make mistakes and I ought have done that.  
16 However, that decision was made back in April or May  
17 and I did not see in April or May this eventuality.  
18 I didn't see that until November.

19 COMMISSIONER MILLER: The eventuality being  
20 the interplay of the two cases?

21 MR. FREEMAN: The interplay of the two  
22 cases, where -- yes. I didn't see that eventuality  
23 back then. And in April or May, I may as well say it  
24 all. In April or May, as I looked ahead, Florida had  
25 just finished harvesting that monster 2003-2004 crop,

1 had a good bloom, and it looked as if Florida's crop  
2 for 2004-2005 was going to be another 210, 230 million  
3 range. And in that environment, what do I care about  
4 Brazilian? I'm not going to bring any in except the  
5 absolute minimum that I have to for blending and I'm  
6 going to say, now, why do you have to use that much?  
7 And I'm going to be busy exporting. So a dumping case  
8 becomes irrelevant to me in that environment.

9 COMMISSIONER MILLER: The new case?

10 MR. FREEMAN: Any new case.

11 COMMISSIONER MILLER: Or this order. Either  
12 one.

13 MR. FREEMAN: Either or.

14 COMMISSIONER MILLER: Okay.

15 MR. FREEMAN: I mean, that's why. Because  
16 in April or May --

17 COMMISSIONER MILLER: You did not perceive  
18 that you had an interest in participating as an  
19 interested party at the point in time that you would  
20 have had to request to do so.

21 MR. FREEMAN: Precisely correct.

22 COMMISSIONER MILLER: Okay.

23 MR. FREEMAN: And my counsel told me that  
24 I should sign up anyway and not appear and I won't  
25 make that mistake again.

1                   COMMISSIONER MILLER: Well, you're not wrong  
2 to not always follow your counsel.

3                   MR. FREEMAN: Did you hear that?

4                   COMMISSIONER MILLER: Okay. Fine. All  
5 right. I just wanted to make sure I understood that.

6                   Let me pose one question, I think, that  
7 I would ask that you and your counsel address in any  
8 post-hearing submission that you make and that is to  
9 compare this case and this sunset review to other  
10 cases that we've had where we've had something less  
11 than full support of the domestic industry in a  
12 review. There are a couple of cases out there.  
13 I would call attention in particular to industrial  
14 phosphoric acid and industrial belts where we had  
15 issues related to the level of domestic production  
16 that was accounted for by companies supporting  
17 continuation of the order and how we handled it.

18                   To the extent there's some precedence for us  
19 on this issue, I would appreciate your addressing  
20 that.

21                   And with that, I don't believe I have any  
22 further questions at this point. I appreciate your  
23 being willing to be here today, Mr. Freeman, and to  
24 tell us your story. Thank you.

25                   CHAIRMAN KOPLAN: Thank you, Commissioner.

1 Commissioner Hillman?

2 COMMISSIONER HILLMAN: Thank you. I think  
3 somewhat along the lines, I guess it would be helpful  
4 for me to understand a little bit more about your  
5 understanding about why you are the only domestic  
6 producer that's here today, even in a non-party  
7 capacity.

8 As you describe this situation, the only one  
9 that's really going to benefit if the scenario plays  
10 out where the order is revoked, this current order is  
11 revoked, and a new order should come into effect in  
12 light of this new petition is as you describe it here  
13 in the United States is only Southern Garden. Is that  
14 correct?

15 MR. FREEMAN: Yes.

16 COMMISSIONER HILLMAN: Okay. So why are you  
17 the only one that's here today?

18 MR. FREEMAN: I'm the only one that pays  
19 attention in the industry, sometimes. And that  
20 happens to be true. You have to go one by one.  
21 Tropicana, which is the largest, isn't here because  
22 they don't make concentrate and they don't care about  
23 it. Minute Made isn't here because they market all  
24 their own internally, they don't care about it. They  
25 don't compete with Southern Gardens. The other main

1 competitor with Southern Gardens is Peace River Citrus  
2 Products. He's not here but he has withdrawn his  
3 support for the new petition and he was a petitioner  
4 and he knows I'm going to be here.

5 COMMISSIONER HILLMAN: Okay. All right.  
6 I appreciate that answer.

7 Again, I wanted to get a little bit more on  
8 two issues. One, first, is again Mr. Greenwald is  
9 stating that he thinks that the pricing situation is  
10 better in Europe, Asia, other parts of the world,  
11 rather than in the United States.

12 Can you just give us your sense of -- I'm  
13 looking out there at frozen concentrated orange juice  
14 prices, what are U.S. prices right now relative to  
15 prices in Asia or Europe?

16 MR. FREEMAN: On today's market, in the  
17 period of investigation, during the period that we had  
18 this enormous crop in Florida and the industry  
19 overhang, prices in the States were lower than world  
20 prices. The U.S. went to world price with duty off.  
21 The protection of the duty is now being afforded  
22 again. Prices in the states have reached where they  
23 are in Europe. Europe is about \$800 a ton today, \$800  
24 a ton works out to be 60 cents, 56 cents. Duty  
25 unpaid, you had 30 cents to it, you're at 80 cents a

1       pound solid. So today, U.S. prices are at European  
2       prices. I don't know so much about Asia.

3               COMMISSIONER HILLMAN: Okay. All right.

4               Then the other issue I wondered if you could  
5       help me with is you've mentioned a couple of times the  
6       issue of the duty drawback program.

7               I guess it would be helpful if you could  
8       help me make sure I understand how that works.  
9       I understand what duty drawback is, but I'm trying to  
10      understand in this industry vis-a-vis Brazil how does  
11      the duty drawback program affect prices? How does it  
12      work and how does it affect prices?

13              MR. FREEMAN: Could I excuse myself to go to  
14      the lavatory for one minute?

15              COMMISSIONER HILLMAN: Absolutely.

16              MR. FREEMAN: I just need a break.

17              (A recess was taken from 10:43 a.m. until  
18      10:45 p.m.)

19              CHAIRMAN KOPLAN: We can resume.

20              MR. FREEMAN: Thank you.

21              COMMISSIONER HILLMAN: Okay, Mr. Freeman.  
22      The duty drawback issue.

23              MR. FREEMAN: The world price for orange  
24      juice or Brazilian orange juice specifically, that  
25      which is traded not in the United States, is quoted in

1     what they call FCA and I don't even know what that  
2     stands for. It is duty unpaid into a country or cost  
3     in freight somewhere in the world. That price is the  
4     world price, it is a price before the duty is added to  
5     it in the country that imports it. Or it's an FOB  
6     price Santos, the port of shipment.

7             That price by definition will always be  
8     below the price in the United States because you have  
9     the duty in the United States, except when the United  
10    States becomes a net exporter.

11            So to export Florida product or blends of  
12    Florida and Brazilian product or whatever, in order to  
13    compete in that world market, you need to be able to  
14    buy your way in, you need to compete, and so you do  
15    the following math. I will buy as a merchant, and  
16    there are a number of them, I will go out and buy  
17    product in Florida for 70 cents. I will turn around  
18    and sell it for 90 cents. Excuse me. I'll buy it for  
19    90 and sell it for 70. I will make 9 cents because  
20    I will get my drawback. You get 29 cents of drawback.  
21    And what you need is to compete with the world price,  
22    which is a duty unpaid price.

23            COMMISSIONER HILLMAN: Okay. And you get  
24    your drawback even if you have not been importing? Or  
25    you're saying you get your drawback only on that

1     portion of the product that has been imported from  
2     somewhere and paid duty?

3             MR. FREEMAN:  There's the same condition,  
4     substitution drawback, which means that you have had  
5     to have imported an ample quantity in the previous  
6     three years.  There are, however, mechanisms by which  
7     a merchant who has drawback can buy product from  
8     someone, U.S. domestic product, sell that product back  
9     to the same individual, C&F to some foreign  
10    destination, and use that individual's drawback.  
11    There is a market for drawback.  I have sold drawback  
12    to people in the case.  There's a market for drawback.  
13    It's 2 cents bid at 7 right now.

14            COMMISSIONER HILLMAN:  Okay.  All right.  
15    I think I understand it.  I mean, obviously, everybody  
16    that does importing has the drawback and then they  
17    can --

18            MR. FREEMAN:  Or has access to it.

19            COMMISSIONER HILLMAN:  And then they can  
20    sell it or use it themselves as they see fit.

21            MR. FREEMAN:  Yes.  Correct.

22            COMMISSIONER HILLMAN:  And how does that  
23    currently affect the relationship between U.S. prices  
24    and prices -- you're saying in Europe we are -- you  
25    were testifying earlier that we're basically equal



1 right now.

2 MR. FREEMAN: Yes. Yes.

3 COMMISSIONER HILLMAN: And does the drawback  
4 affect that?

5 MR. FREEMAN: What I'm saying is that the  
6 European duty unpaid price today is -- we'll call it  
7 55 cents a pound solid, which I think is about right.  
8 That is the price in Europe. The price in the United  
9 States is somewhere north of 90 cents, let's call it  
10 95 cents. Those prices are about the same because you  
11 have the 30 cents and the 55 cents. What happened  
12 last summer was that the U.S. duty paid price went  
13 down to the world price. Prices today are --

14 COMMISSIONER HILLMAN: And that was a  
15 function both of the large U.S. crop and the fact that  
16 there wasn't as much product being imported so there  
17 wasn't as much drawback? I'm trying to understand how  
18 the drawback has an effect on the price.

19 MR. FREEMAN: The drawback -- in order to  
20 sell Florida product into the world market --

21 COMMISSIONER HILLMAN: You need drawback?

22 MR. FREEMAN: You need drawback to be  
23 competitive.

24 COMMISSIONER HILLMAN: Okay. And presumably  
25 when Florida has a very good crop, there aren't as

1 many imports and therefore there isn't as much  
2 drawback?

3 MR. FREEMAN: You can make the drawback last  
4 five years from importation.

5 COMMISSIONER HILLMAN: Okay. I understand.

6 MR. FREEMAN: So there's a bank floating  
7 around within the industry.

8 COMMISSIONER HILLMAN: Okay. All right.

9 MR. FREEMAN: And it is traded.

10 COMMISSIONER HILLMAN: Okay. I appreciate  
11 those answers and I would only join with Commissioner  
12 Miller in helping us understand how we should look at  
13 this case, given what is clearly your domestic  
14 industry support. I mean, you may not be a party in  
15 the case, but you're clearly a domestic producer, how  
16 we view that and it compares to what we've done in  
17 other cases in which there has been some but limited  
18 domestic support in favor of retaining an order.  
19 I think it will be helpful.

20 Thank you very much, Mr. Freeman.

21 CHAIRMAN KOPLAN: Thank you, Commissioner.  
22 Commissioner Lane?

23 COMMISSIONER LANE: Thank you.

24 First of all, Mr. Freeman, I'm going to  
25 disagree with Commissioner Miller. You should always

1 accept the advice of your lawyer.

2 Okay. Let's go to my question now. I want  
3 to follow up on some questions about the futures  
4 market. How many months are covered by the futures  
5 market?

6 MR. FREEMAN: Let's see. We always have two  
7 Januarys on the board, so there's always -- there's  
8 Jan, March, May, July, Sept, Nov, Jan. A minimum of  
9 seven and usually eight.

10 COMMISSIONER LANE: So a minimum of seven,  
11 and how does the futures market then relate to  
12 contracts if the contracts have a year term?

13 MR. FREEMAN: I misunderstood the question  
14 and didn't answer it. Each contract calls for the  
15 delivery of a specified quantity in a specified place  
16 during a specified month. There is one contract for  
17 delivery in January, and there is another contract for  
18 delivery in March, and another one for delivery in  
19 May, and another one for delivery in July, and another  
20 one for delivery in September, November, and the  
21 following January. So all of those can be traded  
22 simultaneously.

23 COMMISSIONER LANE: Okay. Thank you.

24 How soon will the hurricanes that Florida  
25 recently experienced, how soon will that have an

1 effect upon the industry?

2 MR. FREEMAN: It already has.

3 COMMISSIONER LANE: And how long will that  
4 effect last?

5 MR. FREEMAN: If I knew that, I would be a  
6 wealthy man next week or not too long from now.  
7 I don't know the answer to that. It's a question of  
8 speculation as to what will happen to hurricane  
9 ravaged trees. It's unprecedented in the history of  
10 the state. The only other hurricane that had any crop  
11 damage of any size was Betsy in 1964. Nobody knows  
12 for sure.

13 The people I pay attention to, the smart  
14 people in the industry that are in the field and good,  
15 are saying that to replant the trees that were blown  
16 away, those trees won't come into production for four  
17 to seven years. To recover from the effect of the  
18 hurricane damage, the coming crop is going to be a bad  
19 one, the trees just are not in a position to grow.  
20 The one after that is uncertain. So you've got one  
21 more year of a highly probable short crop. We hope  
22 it's not as short as this one. And then who knows.

23 COMMISSIONER LANE: Do you agree that there  
24 has been a downward trend in consumption of orange  
25 juice and, if you agree with that, to what do you

1 attribute the downward trend?

2 MR. FREEMAN: I got some chuckles at the  
3 hearing I was here before when I said young kids are  
4 drinking diet Coke for breakfast and that's one of  
5 them. In the longer term, just competing beverages.  
6 We can only drink so many liquids a day and you've had  
7 new beverages coming in.

8 In the shorter term, two enormous impacts.  
9 One of them is the impacts of the Atkins and  
10 specifically the Southbeach diet which truly did  
11 rubbish orange juice. The latter one just said it's  
12 bad and evil for you. And the craze that those did.  
13 And the other one, which is more insidious, is  
14 Tropicana, Minute Maid, and then Wal-Mart having  
15 introduced what they're not calling orange juice light  
16 but they're merchandising as orange juice light. If  
17 you go to the grocery store, you'll see a half-gallon  
18 carton right in the middle of all of the other  
19 half-gallon cartons that says 50 percent of the  
20 calories. It looks like orange juice, it allegedly  
21 tastes like orange juice, but what's in there is 50  
22 percent orange juice, 50 percent water and Splenda.  
23 And so the demand for orange juice has gone down, the  
24 demand for water and Splenda has gone up, but the same  
25 number of gallons could be being sold. So it's a

1 combination of diet concerns, competing beverages, and  
2 clever marketing by Coke and Pepsi.

3 COMMISSIONER LANE: Okay. I would like now  
4 to discuss domestic like product.

5 Frozen concentrated orange juice for  
6 manufacturing has different characteristics from  
7 frozen concentrated orange juice for retail. Each of  
8 these is different from single strength orange juice.  
9 Since Citrovita did not comment on the definition of  
10 domestic like product, I would like your views as to  
11 the domestic like product.

12 Should the commission stay with FCOJM or  
13 should retail products be included in the domestic  
14 like product and why?

15 MR. FREEMAN: FCOJR in retail packages was  
16 consciously omitted from the new petition and FCOJR,  
17 you take FCOJM and you blend it, you add some oils and  
18 essences maybe, and then you change the brix and you  
19 put in the package.

20 The reason I suspect it was done is because  
21 the domestic industry does not want, did not want, a  
22 whole bunch of consumer groups walking in and saying,  
23 hey, hold it, this is the cheapest, best form of  
24 orange juice, it's the most economic, and you're  
25 hurting the consumer if you do this.

1 I believe it should be included, but I don't  
2 make the rules.

3 COMMISSIONER LANE: The other question  
4 I have relates to how important is the country of  
5 origin in marketing?

6 Several questionnaire responses cited the  
7 importance of product of Florida or 100 percent  
8 Florida labeling.

9 How does the importance of such labeling  
10 compare to the importance of blending oranges from  
11 non-Florida sources like from Brazil for desired  
12 quality?

13 MR. FREEMAN: There are two important  
14 answers to that question. The first one is there is a  
15 country of origin labeling law on juices that if you  
16 have any imported product you have to declare the  
17 country or country of origin unless one single country  
18 comprises 75 percent of all the imported product that  
19 is in there.

20 And so since Brazil is the dominant  
21 supplier, everybody needs Brazil and then they can use  
22 a little bit of Costa Rica, Mexico, Belize, Honduras  
23 and the rest of them.

24 Now, as far as the all-Florida label goes,  
25 that has been primarily a marketing tool that was used

1 by specifically Tropicana for not from concentrate  
2 product, which I do not make, and can only speak as an  
3 outside observer on.

4 To the best of my knowledge and belief,  
5 there are no major U.S. companies that are putting an  
6 all-Florida label on concentrated products. Don't do  
7 it.

8 COMMISSIONER LANE: Okay. Thank you.

9 That's all the questions I have,  
10 Mr. Chairman.

11 CHAIRMAN KOPLAN: Thank you, Commissioner.

12 Commissioner Pearson?

13 COMMISSIONER PEARSON: I'd like to split the  
14 difference between the views of Commissioners Miller  
15 and Lane and say that in my view one always should  
16 listen carefully to one's attorney and generally  
17 accept advice, but I think there could be commercial  
18 considerations, other things that would -- you might  
19 find some exceptions there to always taking the  
20 advice.

21 MR. FREEMAN: A third alternative is to ask  
22 a second opinion.

23 COMMISSIONER PEARSON: Just a little bit  
24 more on the futures market, because I'm just trying to  
25 understand the implications for pricing in an



1 environment in which the world's only futures market  
2 for orange juice is captive in a country that has a  
3 substantial import tariff. It seems to me that that  
4 must have the effect of creating greater price  
5 fluctuations in the United States than overseas  
6 because you have -- well, the tariff itself would do  
7 that, I guess, but you have what you might call a  
8 normal market condition where the United States is  
9 importing and the tariff in effect is having a  
10 protective purpose and you have the times when the  
11 U.S. has surplus and the price premium fades away and  
12 the United States juice is trading at world values.

13 First of all, do I understand that  
14 correctly? Is that --

15 MR. FREEMAN: That is correct. There are  
16 two things about the fact that the only futures market  
17 has a tariff embedded in it. One of them is exactly  
18 what you said, which is that there is enormous  
19 fluctuation and when the U.S. becomes world price-ish  
20 or when the U.S. becomes a net exporter or wants to be  
21 a net exporter because it's produced too much, it's  
22 got to do one of two things. It's got to export it  
23 into the world market, the price just gravitates  
24 there, or, two, it's got to store it and the market  
25 acts as a storage.

1                   The other thing that the futures market does  
2   sort of, because it's in this market, is it makes the  
3   world price higher than it otherwise would be. If the  
4   tariff disappeared, the futures market price that  
5   people would read in the newspaper would be somewhere  
6   between -- certainly 5 and 29 cents a pound solid  
7   cheaper than it is. I'm going to guess it would  
8   probably be half that, split it. So that the  
9   existence of the futures market, it's enormously  
10  volatile, depending on what's happening with domestic  
11  supplies, and it makes for a world price that is  
12  higher than would otherwise be the case.

13                  COMMISSIONER PEARSON: A reported world  
14  price.

15                  MR. FREEMAN: A reported world price.

16                  COMMISSIONER PEARSON: As a practical  
17  matter, Brazilian juice is going to FOB'd at something  
18  quite a bit below New York futures normally.

19                  MR. FREEMAN: Yes. However, unsophisticated  
20  buyers in some places of the world will sometimes pay  
21  higher prices.

22                  COMMISSIONER PEARSON: We don't need to know  
23  more about that here right now, I don't think.

24                  So when FCOJ is exported from the United  
25  States, is it always exclusively of U.S. origin or are

1       there instances in which there would be a blended  
2       juice that would be exported?

3               MR. FREEMAN: The answer is this. It  
4       depends on for what reason the juice is being exported  
5       and there are two reasons that juice is exported. One  
6       of them is to fix up a quality or quantity problem  
7       that the Brazilians are having in Europe. That  
8       happened in 2001 when Cargill took delivery of 25,000  
9       tons and lifted it all to Europe because Cargill was  
10      out of juice in Europe. And so the European market is  
11      not as fussy about color as the U.S. market is,  
12      strangely enough, and so there's a regular flow of low  
13      color product from the United States to go into Europe  
14      that's enormously increased when the Brazilians are  
15      relatively short of product.

16             If you look at exports over the last four or  
17      five years, you'll see that there's a constant  
18      minimum, but you'll see enormous blips upward and  
19      those are situations where Brazil had a short crop, a  
20      relatively short crop, and reached out to Florida and  
21      pulled it in. I mean, I did it, Cargill did it,  
22      Citrasuco did, Catrale did it.

23             COMMISSIONER PEARSON: Okay. But if --

24             MR. FREEMAN: And the origin doesn't matter  
25      that much.

1                   COMMISSIONER PEARSON: But in the situation  
2     you described, the United States would then not be  
3     exporting to Europe a juice blend that includes both  
4     U.S. and Brazilian origins, it would be shipping  
5     straight U.S. origin?

6                   MR. FREEMAN: I would venture that in  
7     non-packaged bulk form 95 percent of what's exported  
8     is 100 percent domestic.

9                   COMMISSIONER PEARSON: Okay. And then if  
10    the blending is required, it's done in Amsterdam or --

11                  MR. FREEMAN: If blending is required, it's  
12    done at destination.

13                  COMMISSIONER PEARSON: Yes. Okay. My last  
14    question is perhaps more appropriately directed to  
15    counsel. Perhaps in you could in the post-hearing  
16    provide some insight into the degree to which our  
17    statutes that we must apply in this review, to what  
18    degree do those statutes allow us to take into  
19    consideration the interplay between this review and  
20    the newly-filed case?

21                  This has been a very interesting discussion  
22    perspective and, frankly, I'm not completely sure  
23    exactly what to do with it. If you could help me  
24    understand that, that would be great.

25                  MS. GRIFFIN: I'd be happy to do that for

1       you.

2                   COMMISSIONER PEARSON:   Thank you.

3                   Mr. Chairman, I have no further questions.

4                   CHAIRMAN KOPLAN:   Thank you, Commissioner  
5       Pearson.

6                   I just have one and this is following up on  
7       my earlier round.

8                   In the annual contracts you mentioned  
9       earlier between producers and extractors and their  
10      customers, are prices fixed or tied to the futures  
11      contracts?

12                  MR. FREEMAN:   Both.

13                  COMMISSIONER PEARSON:   Both?

14                  MR. FREEMAN:   There are three basic  
15      variations. One of them is fixed, what we called  
16      fixed, flat and final, where you say for the next year  
17      your price is this. And then you can have all sorts  
18      of asterisks about what have you. The second one is  
19      floating, which means that it is at a certain  
20      relationship to the futures market for the next year.  
21      And the third one is floating fixed to the futures  
22      market with a minimum and/or a ceiling price. So  
23      those are the three variations. All three exist and  
24      are common.

25                  CHAIRMAN KOPLAN:   Thank you.

1                   MR. FREEMAN: And one other thing. It is  
2 not uncommon for one customer with one supplier to  
3 split the pricing a little bit. Let's say he uses 100  
4 units and he says, well, I'll buy 50 percent of my  
5 requirement at a fixed price and the other 50 percent  
6 at a floating price tied to the futures market.

7                   CHAIRMAN KOPLAN: Thank you. That's  
8 helpful. I appreciate it. I appreciate all your  
9 answers to our questions.

10                  Let me see if there's another round.

11                  COMMISSIONER HILLMAN: I have only one  
12 question. You turned a little bit, Mr. Freeman, in  
13 commenting on the very good crop that was had in  
14 Florida last year and then commented a little bit,  
15 I think, on the impact of the hurricane. I mean,  
16 obviously, if we look back at the original  
17 investigation in this case, it occurred during the  
18 period of some of these very significant freezes that  
19 you've discussed in the mid 1980s and those were cited  
20 in the original report as some of the reason for the  
21 increased volume of Brazilian imports and the fact  
22 that U.S. prices didn't go up as you would normally  
23 have expected them to go up following a lowering of  
24 the supply of product.

25                  I wondered if you can tell us what you would

1 expect in light of the hurricanes that we've had. You  
2 mentioned what you thought the USDA estimates were on  
3 the totals. What is that going to do in terms of is  
4 there going to be a big draw into the market of  
5 Brazilian imports and what is it likely to do to  
6 prices?

7 MR. FREEMAN: The biggest phenomena is going  
8 to be the drawdown in the inventories that have  
9 accumulated. That is going to be the single biggest  
10 factor, the drawdown that was created. The  
11 inventories that were created by the 2003-2004 crop  
12 are going to be drawn down to reasonable and maybe  
13 edgy sort of levels before the new crop becomes  
14 available in Florida.

15 The market is going to go back to -- in the  
16 absence of improved demand, that's all that's going to  
17 happen. I mean, if demand continues to be anemic and  
18 lousy, that's pretty much it.

19 COMMISSIONER HILLMAN: No significant  
20 increase in pull in from Brazil?

21 MR. FREEMAN: Significant is in the eye of  
22 the beholder. There will be an increase in imports  
23 from Brazil.

24 COMMISSIONER HILLMAN: And prices?

25 MR. FREEMAN: Prices are up from 54.20 to 85

1 cents in the futures market, which means from 70 cents  
2 in the cash market to close to 90 cents in the cash  
3 market on juice. I think our average for both this  
4 week is probably close to a buck.

5 COMMISSIONER HILLMAN: Okay. And do you  
6 think there are longer term effects?

7 MR. FREEMAN: I know there are longer term  
8 effects in terms of Florida's productivity going  
9 forward. I just don't know how bad they are. I mean,  
10 there's been an enormous amount of short-term tree  
11 damage that means that the trees will not set a big  
12 crop for 2005-2006 and then there's been water damage.  
13 If a tree's roots are underwater for too long a period  
14 of time, it drowns the poor thing and there was  
15 standing water following those hurricanes for much too  
16 long a period of time and we don't know how bad that's  
17 going to be.

18 The third one is it spread this citrus  
19 canker. The wind spread it throughout the entire  
20 state. So the effects of it are bad, we don't know  
21 how bad. And long? Don't know how long, but it's  
22 more than this year and next year.

23 COMMISSIONER HILLMAN: All right.  
24 I appreciate those answers. Thank you.

25 CHAIRMAN KOPLAN: Thank you very much,



1 Commissioner.

2 I believe there are no other questions from  
3 the dias.

4 Ms. Mazur, does staff have questions of this  
5 witness before we release him?

6 Mr. Diehl?

7 MR. DIEHL: Yes, Mr. Chairman. This is  
8 Michael Diehl on behalf of the Office of the General  
9 Counsel. I have just a few brief questions.

10 Good morning. If I was listening correctly,  
11 I seemed to hear you say that the commission should  
12 not revoke the present order because if there is a new  
13 order, Dreyfus would likely be disadvantaged or  
14 injured.

15 Are you also arguing that the domestic  
16 industry as a whole would be likely injured if the  
17 order is revoked?

18 MR. FREEMAN: It depends on what happens in  
19 the other case.

20 CHAIRMAN KOPLAN: Excuse me. If you could  
21 stay with your microphone so the reporter gets it?

22 MR. FREEMAN: I'm sorry.

23 CHAIRMAN KOPLAN: All right.

24 MR. FREEMAN: It depends on what happens in  
25 the other case, and the domestic industry as a whole

1 I can't speak for. A good number of the domestic  
2 industry would be harmed. The petitioner who withdrew  
3 his support from the petition is one who perceives  
4 himself in risk of harm. That's the reason he did it.

5 MR. DIEHL: So when you said it depends if  
6 there's a new order, you're saying it is your position  
7 that the domestic industry would be harmed. And if  
8 there's not a new order, then what's your position?

9 MR. FREEMAN: If there's not a new order?  
10 I have to admit that there's not an enormous risk.  
11 The only thing that would happen is Citrovia would  
12 lose its competitive disadvantage, which they've found  
13 a way around anyway, but if there is a new order, the  
14 risk to harm of not just my company but a number of  
15 others is big.

16 MR. DIEHL: Okay. Thank you.

17 The staff has no further questions.

18 CHAIRMAN KOPLAN: Thank you, Mr. Diehl.

19 Mr. Greenwald, before I release this panel,  
20 do you have any questions?

21 MR. GREENWALD: No.

22 CHAIRMAN KOPLAN: If not, thank you very  
23 much, Mr. Freeman, for your testimony. It's been  
24 helpful.

25 Mr. Secretary, if you would call the next

1 panel?

2 MR. BISHOP: Would those in support of  
3 revocation please come forward?

4 Mr. Chairman, the witnesses have been sworn.

5 CHAIRMAN KOPLAN: Thank you.

6 You may proceed, Mr. Greenwald.

7 MR. GREENWALD: I'm not going to say very  
8 much except by way of rebuttal. I think we have  
9 budgeted ten minutes for Mr. Scabbia, who is president  
10 of Votorantim International North America.

11 I'd like to say by way of introduction just  
12 one word of caution. It may be, especially in light  
13 of Mr. Freeman's testimony, that you have interests in  
14 business relationships that are company specific and  
15 what I hope you will do is understand that there is a  
16 very limited amount of information that we are  
17 prepared to put on a public record in that regard. We  
18 have given full explanations or what we believe were  
19 full explanations in the questionnaire response and in  
20 the confidential version of the brief. We will answer  
21 any questions you have fully, but I fear that a lot of  
22 it is going to have to be answered in confidential  
23 submissions.

24 So with that, what I would like to do is to  
25 reserve some time to rebut Mr. Freeman at the end

1       rather than sort of going on, we're going to try to  
2       compress this, at the end of Mr. Scabbia's testimony  
3       and then I'll open it up for questions.

4               CHAIRMAN KOPLAN: I will note that it  
5       appeared from your opening statement that you took  
6       some of the brackets off that are in your brief.

7               MR. GREENWALD: I hope I didn't it sensibly.

8               CHAIRMAN KOPLAN: Mr. Scabbia?

9               MR. SCABBIA: Good morning. My name is  
10      Eduadro Scabbia. I work for Votorantim International  
11      North America, Inc., which is a Delaware corporation  
12      and we call it VINA to make it easier. I work for  
13      VINA in the capacity of president and managing  
14      director. VINA is a trading company that is involved  
15      in importation and distribution of Brazilian  
16      commodities within North America, including wood pulp,  
17      chemicals, plastic films that we sell to the packaging  
18      industry, metals, printing paper, a number of  
19      commodities, including non-subject merchandise,  
20      non-subject FCOJ.

21              VINA and Citrovida are affiliates. VINA and  
22      Citrovida are members of the Votorantim Group and are  
23      both owned by the same parent company in Brazil.  
24      I myself have been with the company for 15 years and  
25      the first five years I spent with Citrovida in a

1 number of different capacities.

2 I come before this commission this morning  
3 to state that a revocation of the existing antidumping  
4 order on orange juice concentrate from Brazil will  
5 have no impact on the domestic industry and it will  
6 have no impact on the way Citrovida does business  
7 today and on the way that Citrovida is going to do  
8 business in the future. I would like to point out a  
9 few facts, very important facts, to support what I am  
10 saying here.

11 First of all, Citrovida has a very well  
12 established presence in Europe and Asia. By very well  
13 established presence, I mean Citrovida has a very  
14 comprehensive sales network on those two continents,  
15 including sales personnel, including sales agents in  
16 over 35 countries. Citrovida also has a very  
17 comprehensive, very extensive logistics network in  
18 those two markets, in those two continents, to support  
19 sales. That includes investments that were made by  
20 Citrovida in fixed assets such as four terminals, such  
21 as storage facilities, blending facilities, equipment,  
22 ship tankers that are fully dedicated to the supply of  
23 Brazilian FCOJ to those two markets.

24 With that in mind, it's not difficult to  
25 understand why Citrovida is so much focused there.

1 It's important to understand that the European market  
2 has been and we believe it will be more profitable  
3 than the U.S. market. On top of that those two main  
4 markets are markets that are still showing and have  
5 shown actually substantial growth rates as opposed to  
6 the U.S. market and we just heard discussions here  
7 about how bad the U.S. market is doing. We don't see  
8 that going on in Europe and we do not expect that to  
9 happen in Asia either.

10 So on top of that, it's important to  
11 understand that Citrovia has no available capacity to  
12 supply the U.S. market and with that in mind, I just  
13 want to go back to our questionnaire response where  
14 Citrovia reported the capacity and I want to just  
15 clarify a little bit, that by nominal capacity,  
16 basically, nominal capacity is a number that we use  
17 considering 180 days of processing and in reality that  
18 doesn't happen every year, so that's why in the  
19 questionnaire response you will find some years where  
20 Citrovia has processed over its nominal capacity, in  
21 certain years has processed below its nominal  
22 capacity, because it all depends on crop size, fruit  
23 maturity. So when Mother Nature is generous, you can  
24 extend your processing period longer than 180 days and  
25 sometimes you have to stay with a period of time

1       that's shorter than that.

2               So what's important to understand is that by  
3       all means Citrovida always processes at maximum  
4       capacity. Whenever there is fruit available,  
5       Citrovida will be crushing, Citrovida will be  
6       processing. That might be 180, 190, 160, whatever  
7       Mother Nature gives us.

8               So I just want to summarize what I'm saying  
9       here. So we have a very well established presence in  
10      Europe. We have sales people, customer service  
11      people. We have demonstrative people working for us  
12      in Europe and Asia. Citrovida has logistics, assets  
13      and terminals and ships working to supply those two  
14      markets. Those markets are the markets that are  
15      growing. Those markets are the markets that are more  
16      profitable than the U.S. So with all that in mind,  
17      it's very easy to understand why Citrovida has no  
18      plans to shift volumes to the U.S. It would make no  
19      sense for Citrovida to do such a thing.

20              But I have just one little point to show how  
21      focused Citrovida has been on those two markets.  
22      During the '90s, you saw pretty much the top five  
23      Brazilians, four out of five, came to Florida and  
24      invested in processing facilities in Florida. Some of  
25      them tried to invest in groves and everything else to

1 establish themselves as a permanent presence here in  
2 the U.S. market. Citrovida never did that. The focus  
3 has always been Europe and Asia because of the reasons  
4 that I just listed. But that does not negate or that  
5 does not deny the fact that Florida needs Brazilian  
6 FCOJ, and we have heard explanations about it.

7           The major change that we have seen goes back  
8 to when Trop and other major brands started promoting  
9 the NFC business in the U.S. If you go back to  
10 Florida production, and I think this has been somehow  
11 discussed here, but I'd like to briefly address that,  
12 Florida produces basically, in very simple terms, two  
13 kinds of orange: the early mid season variety that we  
14 can put sort of a label on it, it's called low quality  
15 fruit, and the Valencias, that we can put a label on  
16 it and call it high quality fruit.

17           The NFC, because it's a premium product,  
18 because it deserves a premium price, because consumers  
19 are willing to pay a premium price for the product,  
20 it's capable and able to pay higher prices for the  
21 good quality fruit. And, remember, the quality  
22 requirements for NFC are much greater, much higher,  
23 than they are for FCOJ.

24           So once all the NFC demand is fulfilled,  
25 whatever is left in Florida, it's pretty much like a



1 bunch of early need, low quality fruit, some Valencias  
2 and when you bring the two of them together, it's not  
3 good enough to reach the minimum U.S. grade  
4 requirements that you addressed here a few minutes  
5 ago. So that's when Brazilian FCOJ plays its role, to  
6 blend, to be blended actually, with that product that  
7 Florida has to enhance the quality and bring it up to  
8 standards.

9 As a side effect, you also discussed that  
10 here, there is the drawback, which is a benefit that  
11 allows the U.S. to get rid of some inventories  
12 whenever conditions permit, as a side effect of all  
13 that.

14 So I just want to summarize everything that  
15 I said here. Citrovita has no plans to shift volumes.  
16 Citrovita has no capacity available. Citrovita is not  
17 going to change its way of doing business today and  
18 the way we do business in the future, but that doesn't  
19 keep Florida from needing Brazilian concentrate.

20 That's pretty much what I have to say and  
21 I thank you very much for the time and appreciate it.

22 CHAIRMAN KOPLAN: Thank you very much.

23 MR. GREENWALD: Let me close, give me maybe  
24 five, ten minutes, by going back to basics. The issue  
25 before you is whether subject FCOJ imports from Brazil

1 would injure the domestic industry over a reasonable  
2 period of time if the order were revoked.

3 The subject imports are a small part of  
4 Brazilian production and they are next to nothing,  
5 I believe, in terms of the exports. You've heard  
6 testimony that is more than speculation that that's  
7 not likely to change.

8 So on those facts, it seems to me that the  
9 ability to say with even confidence that there is a  
10 likelihood of injury is nil.

11 The irony of today's hearing is that the  
12 case against revocation was made by a gentleman that  
13 was part of a panel before the ITC a week or so ago  
14 arguing emphatically that imports from Brazil  
15 currently, that is non-subject imports, the great bulk  
16 of imports, do not injure or threaten to injure the  
17 U.S. industry. The reason behind his testimony in the  
18 new case, the essence of it, as I read it, is that  
19 domestic producers, including Louis Dreyfus, need  
20 imports from Brazil for blending purposes and also to  
21 allow them through a duty drawback system to export.  
22 That no injury rationale applies equally to subject  
23 imports. That is, if you discount Mr. Scabbia's  
24 assurance, and there are good business reasons behind  
25 his assurance, it's not speculation, but if you

1 discount that and say, well, but if we revoke the  
2 order, there could be a rise in subject imports.  
3 Remember that it's from a base of essentially zero, a  
4 small part of Brazilian production, but remember  
5 further that by Mr. Freeman's own testimony a good  
6 part of those imports, if they were to occur, would be  
7 for the direct benefit of processors in the United  
8 States. That is, the direct benefit of the U.S.  
9 industry because the U.S. industry needs the Brazilian  
10 juice.

11 His complaint was not that the juice isn't  
12 needed. His complaint was that his own company's  
13 interests -- no, that's not the right word. It's not  
14 would, it's could. Could be disadvantaged relative to  
15 the interests of other U.S. processors.

16 Now, that is as weak a case of injury to a  
17 U.S. industry as a whole as I have heard in a long  
18 while and when the staff put the question to him  
19 directly, there was a long silence.

20 The fact of the matter is, if, as he says,  
21 non-subject imports from Brazil are non-injurious,  
22 then it is virtually impossible to say with anything  
23 close to sort of the integrity of sound reasoning that  
24 subject imports pose a threat of any sort.

25 During the entire statement, you heard no

1 evidence, zero evidence, of injury to the domestic  
2 industry as a whole. What you heard was a Louis  
3 Dreyfus cry that somehow they would be disadvantaged  
4 relative to other domestic producers. That should  
5 carry no weight.

6 Finally, you did hear in response to  
7 questioning that there might be a change in the  
8 pattern of trade from Citrovia. What I would like to  
9 remind you of there is that the entire statement is  
10 speculation. It's an if to say what might be should  
11 certain circumstances arise. There is no hard  
12 evidence to support any rationale for the change in  
13 behavior. And one of the things that you cannot do is  
14 base your decisions on speculation.

15 In a nutshell, it seems to me that the case  
16 against revocation doesn't deserve anything more than  
17 a very casual dismissal.

18 My guess is you have questions, not so much  
19 of me, but of Mr. Scabbia and he's fair game, so why  
20 don't I stop speaking now and welcome your questions.

21 CHAIRMAN KOPLAN: Thank you very much.  
22 You're fair game, too, though, Mr. Greenwald.

23 We'll begin the questioning with  
24 Commissioner Hillman.

25 COMMISSIONER HILLMAN: Well, thank you, and

1 we very much appreciate your time. I would only note,  
2 Mr. Greenwald, that I think we say in virtually every  
3 sunset case that it is inherently a speculative  
4 exercise in that we are being asked to look at what  
5 would happen in the event that an existing order is  
6 revoked.

7 I understand the point that you're making,  
8 but I would only caution you in terms of how far we  
9 can go down that road in a sunset case which  
10 inherently involves our looking at what would happen  
11 if something else does or does not happen.

12 MR. GREENWALD: May I just add an addendum  
13 to that? It is based on evidence. It's not based on  
14 --

15 COMMISSIONER HILLMAN: I understand.

16 MR. GREENWALD: A speculative result based  
17 on entire speculation with no foundation won't carry a  
18 decision.

19 COMMISSIONER HILLMAN: Mr. Scabbia, let me  
20 maybe go to some of the more specific facts in this  
21 case.

22 You had talked about the number of  
23 facilities, employees, marketing agents, port  
24 facilities, storage facilities in Asia and Europe. Do  
25 you have any in the United States?

1 MR. SCABBIA: No.

2 COMMISSIONER HILLMAN: Okay. None at all.

3 MR. SCABBIA: None at all, just our offices  
4 in Delaware. We have demonstrative people, sales  
5 people handling all of the commodities that I listed,  
6 and we are all based in Delaware. It's a bunch of  
7 guys working out of Delaware, but just office,  
8 furniture, computers, and phone lines.

9 COMMISSIONER HILLMAN: Okay. All right. I  
10 just wanted to make sure that was clear.

11 Secondly, Mr. Freeman, in his testimony,  
12 quoted this article which, I understand, you may not  
13 have had an opportunity to see, but the basic gist of  
14 it was that the company, Citrovida, perceives in  
15 Brazil that it is sending approximately 10 percent of  
16 its production to the United States.

17 MR. SCABBIA: I'm not familiar with the  
18 article. I haven't read it. And Citrovida doesn't  
19 have that perception, I know for a fact, because the  
20 focus, again, has been always on the European and  
21 Asian markets. It's important to notice that  
22 Montecitrus has always had a presence in the U.S.  
23 market, even before they decided to partner with  
24 Votorantim and Citrovida with their tolling  
25 arrangement.

1                   So whatever you see here is pretty much a  
2                   continuation of something they had even before this  
3                   relationship took place.

4                   COMMISSIONER HILLMAN:   Okay.  Mr. Greenwald  
5                   described, in his testimony here this morning, that  
6                   Citrovita is relatively small player in the Brazilian  
7                   market and could not export significant quantities to  
8                   the U.S.  Mr. Freeman, I thought, described Citrovita  
9                   as the third-largest producer in Brazil.

10                  MR. SCABBIA:  Third or fourth.  Actually, we  
11                  were talking about less, four -- it used to be five.  
12                  Now we are down to four.  So if you are the third or  
13                  the fourth, you're basically last or the next to last.  
14                  So we're talking about four large processors in Brazil  
15                  today.

16                  COMMISSIONER HILLMAN:  So there's four large  
17                  processors in Brazil today, --

18                  MR. SCABBIA:  Yes.

19                  COMMISSIONER HILLMAN:  -- and Citrovita is  
20                  the --

21                  MR. SCABBIA:  -- either three or four,  
22                  depending on how you see it.

23                  COMMISSIONER HILLMAN:  All right.  Mr.  
24                  Greenwald's testimony comes off as though you're quite  
25                  a small player.  I'm not sure -- the third- or fourth-

1 largest processor in Brazil -- we would necessarily  
2 characterize it that way.

3 MR. GREENWALD: If you go back and look at  
4 the transcript, what you'll see is there are two  
5 companies that are producers of subject merchandise.  
6 One is Citrovida, which is the third or the fourth,  
7 depending on how you count. The other is Branco  
8 Peres, and that is the one I said was too small. It's  
9 not in operation, actually. They are not operating.

10 COMMISSIONER HILLMAN: You had said, I  
11 think, and obviously I can read the transcript, but,  
12 Mr. Greenwald, you had said that the subject imports  
13 are a small part of Brazilian production. I'm just  
14 trying to make sure I understand that in its context.  
15 Mr. Scabbia, you're saying you are either the third-  
16 or the fourth-largest processor in Brazil.

17 MR. SCABBIA: Out of four.

18 COMMISSIONER HILLMAN: Okay. All right.  
19 Okay. Help me understand, Mr. Scabbia, from your  
20 perspective what you think the implications are of  
21 this hurricane in Florida and a very significant  
22 downturn in production of oranges in Florida in this  
23 crop year.

24 MR. SCABBIA: I heard some of Mr. Freeman's  
25 explanations, and I have to say that I have to agree



1 with most of what he said. We have immediate damage  
2 that's been caused. We can see that. So actually the  
3 crop we are beginning to crush in Florida has been  
4 strongly affected by the hurricane. We do expect the  
5 upcoming crop, the one that we're going to start  
6 crushing in October and November of 2005, to also be  
7 affected by the hurricane. The trees having been  
8 defoliated, so it's a combination of factors that one  
9 should not expect those trees to yield large  
10 production this particular year.

11 Long-term damage? Yes, there has been some  
12 water, standing water, on the groves that's sat there  
13 for longer than it should. The canker issue that Mr.  
14 Freeman mentioned is also true. We have seen canker  
15 showing up in a number of different regions in the  
16 State of Florida, areas that were absolutely  
17 protected, free from canker right now.

18 COMMISSIONER HILLMAN: Just so I'm clear,  
19 when you say "we," do you own --

20 MR. SCABBIA: Myself as an observer.

21 COMMISSIONER HILLMAN: Okay.

22 MR. SCABBIA: I follow the industry. I try  
23 to educate myself.

24 COMMISSIONER HILLMAN: I just wanted to make  
25 sure.

1 MR. SCABBIA: Sorry.

2 COMMISSIONER HILLMAN: You have, as you've  
3 described it, no groves, no growing, no facilities, no  
4 processing, --

5 MR. SCABBIA: Nothing there.

6 COMMISSIONER HILLMAN: -- no sales agents,  
7 no storage tanks here in the U.S.

8 MR. SCABBIA: Nothing, nothing.

9 COMMISSIONER HILLMAN: Okay.

10 MR. SCABBIA: Because we are in this  
11 industry, we try to follow trends and news to the  
12 best --

13 COMMISSIONER HILLMAN: Okay. Then I don't  
14 know whether -- again, I take very seriously Mr.  
15 Greenwald's caution about this issue of what  
16 information, in terms of relationships, is or is not  
17 confidential. Mr. Freeman, obviously, spoke very  
18 clearly about this issue of the tolling arrangement  
19 that you have where product that you are processing in  
20 Brazil is coming in under Montecitrus's, I think it  
21 is, name, if you will, and, therefore, under their  
22 zero margin. Is there anything you would want to  
23 comment about that? Is there anything that you can  
24 say now? If you would prefer to do it in a post-  
25 hearing brief, that's fine.

1                   MR. SCABBIA: I would rather do it  
2                   confidentially in the post-hearing submission.

3                   COMMISSIONER HILLMAN: If you could, again,  
4                   specifically address this issue.

5                   MR. SCABBIA: No problem.

6                   COMMISSIONER HILLMAN: And, again, Mr.  
7                   Greenwald, I think you alluded to the fact that, in  
8                   your view, there wouldn't be any reason to change your  
9                   current ability to get into the U.S. market should the  
10                  order be revoked, but, I guess, if there is anything  
11                  that you can say about whether it is the order, the  
12                  existence of the order, that has caused you to sell  
13                  into the U.S. market through this tolling arrangement,  
14                  I can understand that. You toll. You can come in and  
15                  bring in product, in essence, product that is legally  
16                  owned by and, therefore, gets a zero margin because  
17                  it's coming in as Montecitrus product.

18                  Presumably, in the absence of an order,  
19                  would there still be a reason to do that, a business  
20                  reason separate and apart from the dumping order that  
21                  you would still continue to be a toll processor for  
22                  Montecitrus and send product to the U.S. market  
23                  through their arm? I can imagine that there might be  
24                  some. If there is anything that you can say now,  
25                  great, and if not, if you could please respond to that

1 in the post --

2 MR. SCABBIA: May I ask John one quick  
3 question, if you don't mind?

4 COMMISSIONER HILLMAN: Yes.

5 (Pause.)

6 MR. SCABBIA: Yes. We will describe that  
7 all in our post-hearing submission.

8 COMMISSIONER HILLMAN: Okay. Obviously,  
9 what I'm looking to understand is why did the toll-  
10 processing arrangement come about. Did it come about  
11 as a result of the dumping order, or did it come about  
12 for independent business reasons, and, if so, again,  
13 would the dumping order, if it were to go away,  
14 whether it would change it? So I look forward to  
15 seeing that.

16 MR. SCABBIA: I can describe that, how the  
17 relationship between our group and Citrovita took  
18 place back in -- this is the story. Montecitrus used  
19 to own a processing plant called Cambui Citrus. You  
20 may be familiar with this name because it was under  
21 the order some time ago. So that was a processing  
22 operation, and Montecitrus used to own -- I think it  
23 was 40 or 50 percent of that business. The other half  
24 was owned by a Brazilian bank.

25 In 1999, if I'm not mistaken, that's when

1     our group went out and bought that business, and as a  
2     part of the negotiation, Montecitrus decided to  
3     negotiate with us and to establish this agreement,  
4     this tolling agreement, with us so they could maintain  
5     control over their fruit. Montecitrus has always be  
6     an exporter. They don't want to be just a fruit  
7     supplier. They always wanted to have their own fruit,  
8     their own juice, and operate in the marketplace. So  
9     that's pretty much as far as I can go. Beyond that,  
10    we'll discuss confidentially.

11               COMMISSIONER HILLMAN: I appreciate that.

12               Mr. Greenwald, you raised in your brief this  
13    whole issue of drawback and the fact that we need to  
14    figure out a way to account for it, as it does  
15    presumably have a benefit that may not be reflected in  
16    a price, but it is clearly a benefit that is accruing  
17    to those that do the importing that can then turn  
18    around, as I understood Mr. Freeman's testimony, and  
19    broker or sell those drawback credits, if you will, or  
20    however we're going to talk about them. Do you have a  
21    sense of how it is that you would suggest that we  
22    place a value on that?

23               MR. GREENWALD: Yes. What I would suggest  
24    you do is look at the drawback and the exports that it  
25    enables and try and net those exports out from the

1 imports. Let me just say hypothetically you have a  
2 Brazilian producer that exports, but overwhelmingly  
3 its exports go to a U.S. processor for blending, and  
4 that U.S. processor, because of the duty drawback it  
5 pays, is then able to export an equivalent amount of  
6 juice. It would be the blended juice, but it would  
7 get the full advantage of the duty drawback to the  
8 amount of imports.

9 What I would submit to you there is you  
10 actually have a net import of zero, and you can  
11 account for it that way.

12 COMMISSIONER HILLMAN: I appreciate the  
13 answer. Thank you very much. Thank you, Mr.  
14 Chairman.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.  
16 Commissioner Lane?

17 COMMISSIONER LANE: Good morning. Explain  
18 to me why you all are here in this case if you are  
19 saying that Citrovida has no plans to ship more  
20 product to the United States, and it has no available  
21 capacity.

22 MR. GREENWALD: Because it is a relatively  
23 low-cost appearance. The fact of the matter is -- I'm  
24 serious about this -- I think that had this been a  
25 bigger deal, Citrovida would have balked at the fees

1 and that it's a nuisance. There is no reason why an  
2 order that says Citrovida is somehow different from  
3 other -- sort of stained in relationship to other  
4 producers shouldn't be on the books. But I believe  
5 that if this were a full investigation with all of the  
6 attendant costs, they might well have reached a  
7 different conclusion.

8 COMMISSIONER LANE: Okay. A follow-up,  
9 then. If, over the years, other companies have been  
10 able to obtain exclusion from the antidumping order,  
11 why has Citrovida been unable to demonstrate that it  
12 should be similarly treated?

13 MR. GREENWALD: Cost-benefit. I believe, if  
14 you go back and look at Commerce reviews, we were  
15 asked of Citrovida. So it was essentially thrown in,  
16 and a margin, I believe, dropped. It was an expensive  
17 proposition.

18 One of the things that I don't think the  
19 government side of this system we have appreciates is  
20 how high the costs are. It was an expensive and not  
21 fully satisfying experience, and they simply opted not  
22 to bother.

23 COMMISSIONER LANE: Okay. So I guess you're  
24 saying that it's more expensive to appear before  
25 Commerce than it is here.

1 MR. GREENWALD: It isn't even close.

2 (Laughter.)

3 COMMISSIONER LANE: Okay. Now, is Citrovia  
4 involved in the other case that is pending before us?  
5 They are excluded from the scope. Is that correct?

6 MR. GREENWALD: No, we are not. That case  
7 does not, by its terms, concern us. Yes, when you  
8 gave us the questionnaire, the advice I gave is you  
9 reply to the questionnaire because that is the thing  
10 to do when the Commission has questions, but we are  
11 not a party. We are not following it. As far as  
12 we're concerned, it doesn't affect us.

13 COMMISSIONER LANE: And so, Mr. Greenwald,  
14 are you involved in the other petition that's going to  
15 be before us at some point?

16 MR. GREENWALD: No.

17 COMMISSIONER LANE: Okay.

18 (Pause.)

19 COMMISSIONER LANE: The hurricanes that hit  
20 Florida; there has been testimony that that has had an  
21 effect already upon the industry, and it's going to  
22 continue to have an effect, and as I understand,  
23 Citrovia sells most of its product in Europe at the  
24 current time. Do you foresee that the impact of the  
25 hurricanes in Florida are going to have such an effect



1       upon the industry in this country and the market that  
2       it would make sense for Citrovida to start selling to  
3       the United States rather than Europe?

4               MR. SCABBIA: That's very easy to answer.  
5       The answer to that is no because you fight for market  
6       share with all of the weapons that you have. The  
7       presence that we have in Europe doesn't mean just a  
8       physical presence. It means a bunch of relationships  
9       that you really put in place over time.

10              So Citrovida supplies today's frozen  
11       concentrate oranges to the largest bottlers in Europe  
12       and Asia, so there is no point in walking away from  
13       that market and just giving up the market share that  
14       we've fought so hard to get. So it makes no sense,  
15       knowing in advance, that the Florida industry  
16       eventually is going to go back to where it was before.

17              So, again, it's a dog fight out here.  
18       Market share is all that we're looking for. Once you  
19       get it, you don't give it up.

20              COMMISSIONER LANE: Let's look at the  
21       definition of "domestic like product."

22              MR. SCABBIA: Okay.

23              COMMISSIONER LANE: Do you think that the  
24       Commission should stay with frozen concentrated orange  
25       juice manufacturing, or should retail products be

1 included also?

2 MR. SCABBIA: I don't know the answer to  
3 that, no. I have never thought of it. I have never  
4 been involved. Honestly speaking, anything that I say  
5 here is going to be just an oddball.

6 COMMISSIONER LANE: Okay.

7 MR. GREENWALD: If I can just add something,  
8 the response from the domestic industry is so poor  
9 that it doesn't much matter in the sense that you are  
10 obliged in either case to look to nonquestionnaire  
11 response data for the bulk of your information. So,  
12 in that sense, I'm not sure that it matters much.

13 If this were a normal situation with a  
14 normal response, the answer I would give you is that  
15 you would have to be very cautious of expanding beyond  
16 the information that you have collected.

17 COMMISSIONER LANE: Earlier, we talked about  
18 the demand for orange juice declining in this country.  
19 What are you seeing in Europe? Is the demand  
20 increasing, staying the same, or has Europe been hit  
21 by the Adkins diet also?

22 MR. SCABBIA: It has, but there is something  
23 else that offsets any decline in consumption. You've  
24 got to break Europe down into a number of different  
25 regions. I don't want to get into too many numbers

1 here because some are confidential, but when you look  
2 at the -- let's call it the western European  
3 countries, consumption level there have reached almost  
4 its peak, so what you see is pretty much organic  
5 growth, and when something like the Adkins diet shows  
6 up, it affects a little bit the consumption. But what  
7 we see today is the former Soviet countries coming to  
8 the market, and people are beginning to drink orange  
9 juice now that they can afford to buy orange juice.

10 So some countries, and I don't want to  
11 mention names here, but we can provide them if you  
12 need, have experienced growth rates in the three  
13 digits, and they keep expanding. They are still in  
14 the stage where they are drinking a finished product  
15 that's not 100 percent orange juice yet. They are in  
16 the stage where they get a little bit of orange juice  
17 plus some corn syrup, some, you know, water added, and  
18 that stuff is pasteurized, and it has a shelf life of  
19 180 days, and that's what they have been drinking. So  
20 as soon as the purchasing power increases, we'll see  
21 this consumption growing more and more and more.

22 The same thing happens in Asia. I don't  
23 have to tell you too much about what goes on in China,  
24 for instance. That's out of this world. So those  
25 markets are growing and will grow for as long as we

1 can see, maybe not at double-digit rates, but, again,  
2 when you establish a comparison between the European  
3 market and the U.S. market, and you see how we here in  
4 America drink orange juice and look at where they are  
5 today, and if you think there will be a point in time  
6 that they are going to be close, so you can make  
7 projections that are going to take you to the sky in  
8 terms of volume that's going to be required to fulfill  
9 all of that demand.

10 COMMISSIONER LANE: Thank you.

11 Mr. Chairman, that's all that I have. Thank  
12 you.

13 CHAIRMAN KOPLAN: Thank you, Commissioner  
14 Lane.

15 Commissioner Pearson?

16 COMMISSIONER PEARSON: Thank you, Mr.  
17 Chairman. Welcome to this panel.

18 Ms. Scabbia, does Citrovida maintain an  
19 accounting system that allows it to determine on each  
20 individual export sale whether or not that product is  
21 being sold at a dumped price?

22 MR. SCABBIA: No, because we don't sell into  
23 the U.S. market. We never saw the need for that.

24 COMMISSIONER PEARSON: And you're not  
25 subject to dumping orders in any other market.

1 MR. SCABBIA: No, not at all, not at all.

2 COMMISSIONER PEARSON: So you would have  
3 some doubts if you were to engage with Commerce in the  
4 three-year process of trying to get excluded as to  
5 whether or not you could meet that standard. Mr.  
6 Greenwald, do you want to respond?

7 MR. GREENWALD: You could have a perfect  
8 accounting system, and you would have some doubts in  
9 your exchange with Commerce. You can track things to  
10 the nickel, and I don't think any lawyer would say  
11 that that is an assurance that Commerce wouldn't do  
12 something completely bone headed.

13 COMMISSIONER PEARSON: Okay. Well, of  
14 course, we don't look behind Commerce's procedures  
15 here, but in terms of the conditions of competition,  
16 I'm just wanting to understand a little about this. A  
17 number of the other Brazilian exporters were able,  
18 through working with Commerce, to be excluded from the  
19 order, and so, in that sense, Citrovida is the largest  
20 outlier, if you will, the largest Brazilian processor  
21 that has not worked with Congress, and I'm trying to  
22 understand why that's the case.

23 MR. GREENWALD: Well, let me put a little  
24 bit of this into context. The companies that were  
25 excluded were excluded in the nineties or maybe in the

1       eighties.

2                   MR. SCABBIA:   The early nineties.

3                   MR. GREENWALD:   I think there were two  
4       tranches.  Commerce goes through phases in terms of  
5       its methodologies.  I found it difficult when was  
6       talking about Citrovida being an outlier and a clearly  
7       pejorative cast to the way he presented it.

8                   At a time when there having allegations --  
9       presumably we'll find out whether or not the case is  
10      initiated -- of a 140 percent dumping margin against  
11      nonsubject imports.  In that context and given  
12      Commerce's current state of mind, the notion that the  
13      nonsubject imports are somehow qualitatively different  
14      and better than, in terms of their relationship to the  
15      dumping law, than subject imports strikes me as a  
16      pretty substantial stretch.

17                   You know, when you deal with the Department  
18      of Commerce professionally daily, it is true that it  
19      is very difficult to predict what the rule is going to  
20      be at any point in time, and what I would advise you  
21      on this particular question is consider the decision-  
22      making process when they occurred, and they occurred  
23      in two batches, where people got off relative to what  
24      they are now.  My guess is that Commerce was going  
25      through one of its more benign periods.

1 COMMISSIONER PEARSON: Okay.

2 MR. SCABBIA: There is a very businesslike  
3 answer to all of that which is pretty simple. If you  
4 look at the fees, honestly, if you look at the fees  
5 you have to spend over the three periods of time and  
6 look at the fees you have to spend on a sunset review,  
7 and given that the U.S. market has never been one of  
8 our priorities, by all means, so we decided long ago  
9 and said, listen, we're going to sit back and wait and  
10 spend the time when we have just the right time to  
11 spend it as opposed to spending tons of money with  
12 legal fees and all of the turbulence that it brings to  
13 the company because you have allocate your people to  
14 do the review, and you have to host the Department of  
15 Commerce people for an extended period of time and  
16 work with them. So it's a cost-benefit kind of thing,  
17 so that's the reason we never, not ever, but we  
18 decided not to go down that path, a very simple, very  
19 business-oriented kind of decision.

20 COMMISSIONER PEARSON: Okay. Mr. Freeman,  
21 in his testimony earlier, indicated that U.S. imports  
22 are relatively variable from year to year, depending  
23 on the size of the U.S. crop and the carry-over stocks  
24 here. Am I correct if I interpret from your earlier  
25 remarks that the demand for frozen concentrated orange

1 juice in Europe and in parts of Asia is more steady  
2 from year to year and less subject to that  
3 variability?

4 MR. SCABBIA: Absolutely because they have  
5 very small domestic production. Only Spain and Italy  
6 produce a few oranges, so the bulk of it comes from  
7 Brazil. When you look at demand in those countries,  
8 you don't see any major volatility in demand.  
9 Actually, you see a steady growth. So you can  
10 basically count the amount of imports that you  
11 allocate to the European markets if you have the right  
12 projections in your hands.

13 COMMISSIONER PEARSON: So then as you look  
14 at the U.S. market, and you consider doing something  
15 to get the order lifted, whether it be at Commerce or  
16 here at the ITC, you're doing it on the basis of  
17 expecting that even if the order is lifted, there  
18 would only be somewhat intermittent opportunities to  
19 sell to the United States. Only in a good year would  
20 you be able to sell.

21 MR. SCABBIA: But we would not have the  
22 juice available -- that's the point I'm trying to make  
23 -- because if you don't have any major fluctuations in  
24 Europe and Asia, and if you are committed to Europe  
25 and Asia the way we are, we have nothing left to bring



1 to the U.S. So this is a game that's going to be  
2 played between the Brazilian processors except  
3 Citrovia and the Florida processors.

4 COMMISSIONER PEARSON: Okay. My last  
5 question, Mr. Greenwald, probably is appropriately  
6 directed to you. To what extent do the statutes allow  
7 us to take into consideration the interplay between  
8 this case and the newly filed case as we make our  
9 determination in this particular review?

10 MR. GREENWALD: It's an interesting question  
11 in light of Mr. Freeman's closing response. My answer  
12 to you would be you have to take the conditions as  
13 they exist now. You can't presume anything about what  
14 Commerce may or may not find, whether they may or may  
15 not initiate, and whether you will or will not find a  
16 reason to continue the case on injury grounds.

17 So what I would argue is that you have to be  
18 as well grounded as you can be in the facts before you  
19 and should not engage in speculation about what may or  
20 may not happen in the other case, and on that basis, I  
21 would urge you to take very seriously Mr. Freeman's  
22 closing point, which was, on the basis of the facts as  
23 they now exist, he would not find a reason, a  
24 compelling reason, even a good reason, to maintain  
25 this order.

1                   His entire case, his entire argument, was  
2                   based on the proposition that if there is an order a  
3                   year down the road against what's now nonsubject  
4                   imports, therefore, you should find now a reason to  
5                   keep this order. And I would submit to you that as a  
6                   matter of law, you can't do that.

7                   COMMISSIONER PEARSON: Okay. If you have  
8                   anything additional you would like to say about that  
9                   in the post-hearing to help me understand the statutes  
10                  here because, of course, I know less about the  
11                  statutes than I do about orange juice by quite a bit,  
12                  so thank you very much.

13                  Mr. Chairman, I have no further questions.

14                  CHAIRMAN KOPLAN: Thank you, Commissioner  
15                  Pearson.

16                  Let me start with you, if I could, with  
17                  regard to the issue of capacity. Okay? On page 3 of  
18                  your prehearing brief, you take issue with the  
19                  Commission staff's characterization of Citrovia's  
20                  reported capacity utilization, and I'm quoting. You  
21                  say: "The staff report mistakenly concludes that  
22                  Brazilian producers of subject imports 'have some  
23                  excess capacity with which they could increase  
24                  production of FCOJ.'" You then state: "In all cases,  
25                  Citrovia operates at 100 percent of its daily

1 capacity as long as suitable fruit is available for  
2 processing."

3 The staff report based that conclusion on a  
4 couple of things. First, the reported Brazilian  
5 subject capacity remained constant between 1999 and  
6 2003 at a level of pounds that I can't identify  
7 because that's BPI. They also stated, the capacity  
8 utilization rates also were fairly constant at a BPI  
9 percent in 1999 and another BPI percent in 2003. On  
10 that basis, they came to the conclusion that you  
11 quote.

12 I would like you, if you could, to explain  
13 this to me. Are you saying that Citrovida never has  
14 any unused capacity? Are there never additional  
15 oranges available to be purchased for processing? It  
16 seems clear that extractor-processors own machinery  
17 that can produce a certain quantity of subject  
18 merchandise each year, and in a given year when this  
19 doesn't happen, the extractor-processors have unused  
20 capacity.

21 I would like you to answer this question, if  
22 you could for me, in light of the following. It  
23 appears that the Brazilian orange crop will be higher  
24 in the current year than last year. Mr. Greenwald?  
25 Mr. Scabbia?

1 MR. SCABBIA: Yes. The '04-'05 crop that we  
2 are about to finish, yes, it's a large crop. It's a  
3 yes.

4 CHAIRMAN KOPLAN: Are you saying that  
5 Citrovia never has any unused capacity?

6 MR. SCABBIA: It works the following way. I  
7 wish I had a diagram here to show you, but that's  
8 pretty much -- I will try to make myself clear.

9 Every crop, you have an available amount of  
10 fruit to process, and every crop, you have a different  
11 maturity curve, meaning that at the right time that  
12 the fruit is going to be ripe and ready to be  
13 harvested and taken to the plant. So those are the  
14 two variables. They are going to basically determine  
15 how many days during that particular season you can  
16 process.

17 You understand, fruit is not available year  
18 round. In Brazil, for instance, it starts sometimes  
19 in June, early June, July, -- it depends on the crop  
20 year -- and it goes through December, sometimes into  
21 January, and it's all a matter of the weather. The  
22 weather is going to determine how ripe and the amount  
23 of fruit that you have.

24 So there are certain years, there are  
25 certain crops, that we end up with a huge amount of

1 fruit, and if the maturity curve is right, you can  
2 really process for, you know, an extended period of  
3 time in excess of the 180 days that we used to mention  
4 nominal capacity. So it's always a matter of what  
5 Mother Nature give us.

6 So the same thing happens --

7 CHAIRMAN KOPLAN: I want to understand  
8 something. If the need arises, aren't there  
9 additional oranges available that you can purchase for  
10 processing?

11 MR. SCABBIA: No. Once the crop is over,  
12 it's over. Once you get to the end of the crop, the  
13 trees are going to start the blooming process towards  
14 the next crop. So that's when you shut down your  
15 plants and do maintenance and do everything else. Our  
16 guys in Brazil would love to have fruit 12 months a  
17 year to process.

18 CHAIRMAN KOPLAN: Let me turn to you, Mr.  
19 Greenwald, because I'm trying to understand your  
20 statement that the staff is wrong when they indicate  
21 that there is a basis for us to conclude that there is  
22 some excess capacity.

23 MR. GREENWALD: Why did I say that?

24 CHAIRMAN KOPLAN: Right. What you cited in  
25 your brief as their conclusion, but what the

1 conclusion is based on is data.

2 MR. GREENWALD: Well, yes, it is based on  
3 data, but it's based on data that has a nominal 180  
4 days' processing year.

5 CHAIRMAN KOPLAN: When you're looking at  
6 Brazilian subject capacity, whether it was constant or  
7 how it fluctuated between 1999 and 2003, and based on  
8 the data we had, it apparently remained constant.

9 MR. GREENWALD: Constant.

10 CHAIRMAN KOPLAN: And also the capacity  
11 utilization rates were fairly constant.

12 MR. GREENWALD: Well, first, as I understand  
13 it, -- I hope I'm not looking at something different -  
14 - as I understand it, what the staff did was they  
15 looked at our, Citrovida's, questionnaire response.  
16 We provided data, and what that shows is a constant  
17 capacity because the capacity is always calculated on  
18 a 180-day, nominal capacity basis. And the data that  
19 I looked at showed periods above and below that. When  
20 the production went above 100 percent capacity, it was  
21 because the fruit was there to crush. When it went  
22 below 100 percent capacity, it was because the fruits  
23 was not there to crush.

24 The point I was trying to make, probably  
25 unartfully, was that the practice is always to crush

1 as much fruit as is available, and in that sense, you  
2 are always using your capacity to the maximum you can,  
3 but some years there will be a gap between nominal  
4 capacity and actual production. Other years, actual  
5 production will exceed nominal capacity, but at all  
6 times what Citrovia and, I believe, other people in  
7 the business do is operate flat out during the  
8 crushing season, however long that is, and that's the  
9 point I was trying to get across.

10 CHAIRMAN KOPLAN: I appreciate that. Thank  
11 you.

12 On page 7 of your brief, you assert that the  
13 correct measure of the volume of FCOJ imports at issue  
14 is on a net basis; that is, "imports minus the exports  
15 of Brazilian FCOJ credited to the domestic industry's  
16 account by the duty drawback system." Under what  
17 authority can the Commission make such an adjustment  
18 to the volume of subject imported product governed by  
19 the scope of an antidumping duty order?

20 MR. GREENWALD: You have broad authority to  
21 take into account any relevant economic factors, so I  
22 don't think -- if you were to do that, I would be hard  
23 pressed to say you don't have any authority to do it.

24 CHAIRMAN KOPLAN: I'm sure you would.

25 MR. GREENWALD: (Laughter.) But there is

1     this issue of how do you factor into your analysis  
2     this unusual situation where imports of subject  
3     merchandise, or, to be more accurate, here it's  
4     actually imports of nonsubject merchandise, facilitate  
5     on almost a one-for-one basis exports that absent the  
6     imports, wouldn't occur? And Commissioner Hillman  
7     asked the same question.

8             It seemed to me that trying to do some sort  
9     of net-basis computation got at the impact of the  
10    imports on the U.S. market.

11            CHAIRMAN KOPLAN: Let me stay with you on  
12    this, if I could, because I'm struggling with it. You  
13    mentioned that imports from Brazil are necessary in  
14    order to receive the duty drawback allowing domestic  
15    producers to export. Isn't it possible that, instead,  
16    duty drawback is actually driven by imports of orange  
17    juice from Brazil and not the other way around?

18            MR. GREENWALD: It always seems to me that  
19    to the extent that you're looking at drawback, there  
20    has to be a volume of an import base that allows you  
21    to do it, but if what you're suggesting is that U.S.  
22    producers import because they have export needs rather  
23    than import because they have blending needs and take  
24    advantage of the duty drawback of the imports for  
25    blending, I would say to you that the blending need



1 comes first, and the duty drawback is essentially  
2 icing on that cake.

3 CHAIRMAN KOPLAN: Isn't it possible it could  
4 be the other way around? No.

5 MR. SCABBIA: No, because it doesn't solve  
6 the balance sheet problem. In other words, if you  
7 have to have drawback to export, and if you have to  
8 import before you export, your end inventories will  
9 always be the same.

10 CHAIRMAN KOPLAN: I appreciate your  
11 responses. Thank you.

12 Commissioner Miller?

13 COMMISSIONER MILLER: Thank you, Mr.  
14 Chairman. Thank you, Mr. Scabbia for being here and  
15 Mr. Greenwald and Mr. Alexander as well.

16 I want to start by actually trying to make  
17 sure I do have the context. At one point a moment  
18 ago, Mr. Greenwald, you referenced the context. Yes,  
19 I need more context here because for Citrovia, for  
20 example, I've been sitting here going through the  
21 original report from the original investigation, and I  
22 don't find Citrovia there, and so I've been trying to  
23 understand Citrovia in the pre-order world, which is  
24 what I usually look to in a sunset investigation.  
25 It's not the performance of the subject imports under

1 the order because the order, I believe, has a distinct  
2 effect, but it's the behavior of the pre-order.

3 Now, there have been a couple of references  
4 to when you got into this business, and there is a  
5 little bit of information in your questionnaire  
6 response, but that's all confidential until you choose  
7 to put it on the public record. Can you give me a  
8 little better sense of Citrovida's business in FCOJ  
9 pre-order and since?

10 MR. SCABBIA: Okay. I'm going to give you a  
11 little bit of Citrovida's history, --

12 COMMISSIONER MILLER: History, yes.

13 MR. SCABBIA: -- the timeline, so it might  
14 help you understand things.

15 Citrovida started business in 1991 in  
16 Brazil. It's a greenfield project, so we didn't  
17 acquire anybody. We started by planting orange trees  
18 in Brazil like crazy. Today, we own over six million  
19 trees in Brazil. Actually, we started by planting  
20 trees.

21 Let me fix this. In 1989, that's when the  
22 first groves were built, -- sorry about that -- and  
23 then in 1991, that's when our first processing plant  
24 was built. So we started with the groves, and then,  
25 in 1991, we built our first plant. In 1998 or 1999, -

1 -- my gosh, I think it's the end of '98, the beginning  
2 of '99, we acquired Cambui Montecitrus. That was  
3 another processor, a competitor of ours in Brazil,  
4 with processing facilities that were about the same  
5 size, and that's when Citrovida became what it is  
6 today. More recently, there has been this acquisition  
7 that's been alluded to.

8 COMMISSIONER MILLER: Okay. So you weren't  
9 here.

10 MR. SCABBIA: No, we were not.

11 COMMISSIONER MILLER: Citrovida was not here  
12 pre-order at all.

13 MR. SCABBIA: No, not at all. We're  
14 newcomers.

15 COMMISSIONER MILLER: The company that you  
16 just told me -- the processing plant you acquired, it  
17 was something Montecitrus, but tell me --

18 MR. SCABBIA: Yes. Okay. They were also  
19 newcomers like us.

20 COMMISSIONER MILLER: Okay.

21 MR. SCABBIA: They came on board in 1992, a  
22 year after we started. It started as a company called  
23 Cambui Citrus. Then, I think, in '96 or '97, that's  
24 when Montecitrus put some capital in and became  
25 partners with the other owners that Cambui had, which

1 was a bank in Brazil.

2 COMMISSIONER MILLER: Okay.

3 MR. SCABBIA: So they were both out of the  
4 case, when the original case was initiated.

5 COMMISSIONER MILLER: So you're essentially  
6 sort of a new entrant to this business.

7 MR. SCABBIA: Yes, yes, sort of.

8 COMMISSIONER MILLER: And even the facility  
9 that you acquired was not shipping to the United  
10 States pre-order.

11 MR. SCABBIA: Correct.

12 COMMISSIONER MILLER: Okay. So you haven't  
13 shipped under the order, but you didn't ship prior to  
14 the order either. You've never shipped. When I say  
15 "you," I'm talking about you, Citrovida.

16 MR. SCABBIA: Citrovida had few shipments  
17 back in '93, '94, '95, I think, through '96 or so, but  
18 very small, very small.

19 COMMISSIONER MILLER: The margins --

20 MR. SCABBIA: Correct.

21 COMMISSIONER MILLER: The first I see, it  
22 was first in 1999 that the Commerce Department  
23 published an order naming Citrovida specifically.

24 MR. SCABBIA: That's correct. That's  
25 correct.

1 COMMISSIONER MILLER: Okay. So you tried to  
2 get into the market.

3 MR. SCABBIA: Exactly.

4 COMMISSIONER MILLER: Okay. Now, VINA's  
5 participation in the U.S. market as a U.S. importer is  
6 a little different, the same? Can you talk about  
7 that?

8 MR. SCABBIA: VINA is pretty much a trading  
9 company. What we do, we go to Brazil, we buy  
10 commodities in Brazil, we come to this country, and we  
11 do distribution, so we buy boat loads of commodities,  
12 and we sell in truck loads, all of those commodities  
13 that I list -- paper, wood pulp, chemicals, metals,  
14 packaging films, printing and writing paper, and it  
15 goes on and on and on -- and also nonsubject FCOJ.

16 COMMISSIONER MILLER: And also nonsubject.  
17 So you have participated in the U.S. FCOJ market with  
18 --

19 MR. SCABBIA: As a distributor.

20 COMMISSIONER MILLER: -- as the distributor  
21 for nonsubject.

22 MR. SCABBIA: That's correct.

23 COMMISSIONER MILLER: Okay. All right. I  
24 wanted to get that clearly on the record, and that is  
25 very helpful because, as I say, I was going back to

1 the original investigation and trying to find you and  
2 having trouble doing so.

3 Now, about how large Citrovida is today; you  
4 had this discussion with Commissioner Hillman about  
5 the size. Mr. Greenwald, I'm pretty sure I remember  
6 you saying in your opening testimony -- I took note of  
7 it -- you said that Citrovida represented 20 percent,  
8 I think, was the number you used.

9 MR. GREENWALD: I think what I said was --

10 COMMISSIONER MILLER: You said less than 20  
11 percent of Brazilian production.

12 MR. GREENWALD: It was an estimate not of  
13 Citrovida but of subject --

14 COMMISSIONER MILLER: Of subject producers.

15 MR. GREENWALD: Right.

16 COMMISSIONER MILLER: Okay. Are less than  
17 20 percent of Brazilian production today. Okay.

18 I think there has been some discussion, and  
19 some of these other things may have gotten me off of  
20 listening to it. If you compared what you do know of  
21 the U.S. market and U.S. prices for FCOJ today, based  
22 on your participation in the market, with other  
23 nonsubject exporters to prices in Asia, Europe --  
24 you've testified a bit to this, but I would like you  
25 to elaborate on it a little bit.

1           MR. SCABBIA: Okay. Generally speaking, as  
2     long as there is oversupply here in the U.S., what you  
3     see is a kind of discrepancy between prices in Europe  
4     and Asia, which are pretty much in line, and the U.S.  
5     prices. The problem is -- it's been discussed here  
6     before -- the cost structure of the Florida industry  
7     does not allow the Floridian FCOJ to compete with  
8     Brazilian in other marketplaces unless you have access  
9     to the drawback that we already discussed.

10           COMMISSIONER MILLER: Right.

11           MR. SCABBIA: But it's not only a matter of  
12     price. The focus that Citrovia has is a combination  
13     of price and the cost of doing business in those  
14     countries, so we're talking about margins, so we're  
15     talking about profits. So the reason is not only the  
16     higher prices is that with all of this scale that we  
17     have built to supply those markets, we focus on them  
18     because you start off by getting a higher price, and  
19     your distribution costs are lower than they would be  
20     if you were shipping to the U.S. If all of this is  
21     aggregated on a combined base, it's going to give us a  
22     higher profit overall. So it's not only price, but I  
23     can tell you that European and Asian prices are  
24     generally higher than the U.S. price as long as there  
25     is oversupply in the U.S.

1                   With the use of drawback, and this has been  
2                   discussed here before, then you start shipping product  
3                   from the U.S. to other markets, and that's when you  
4                   are kind of able to even out those prices, and then  
5                   supply and demand play a free role.

6                   COMMISSIONER MILLER: But in times that you  
7                   don't have an oversupply in the U.S. market, times  
8                   like what we may have coming in the next year because  
9                   of the effect of the hurricane on the Florida crop, in  
10                  that kind of a time frame, do you expect to see U.S.  
11                  prices going above the prices in Europe and Asia?

12                  MR. SCABBIA: I don't see that happening  
13                  because unless there are restrictions imposed to  
14                  imports, as long as the imports can get to this  
15                  country, not free because we pay a very hefty tariff,  
16                  but as long as we keep things as they are today, the  
17                  price should be about the same. Now, you may find  
18                  otherwise it opens up room for arbitrage, and those  
19                  don't last too long. Any discrepancies are easily  
20                  taken care of by the trade, if you understand what I'm  
21                  saying. So as long as you can bring stuff from  
22                  Brazil, using the existing rules, price should be  
23                  about the same.

24                  COMMISSIONER MILLER: Why wouldn't the other  
25                  Brazilian suppliers not have the same incentive to



1 ship to Asia and Europe?

2 MR. SCABBIA: They do. They do. You have  
3 to consider that they are extremely large, huge. They  
4 are about twice the size we are, so they pretty much  
5 have the same share that we have in Europe and Asia,  
6 and they also bring it to the U.S. Again, you have to  
7 keep in mind some of the alliances that are in place  
8 with some local brands like Tropicana, Minute Maid,  
9 and all those guys, so they have arrangements. I  
10 don't want to speculate about what the arrangements  
11 are, but in those deals, those arrangements, those  
12 alliances have been put in place since the late  
13 seventies, early eighties, since this industry  
14 developed to be what it is today. So it's a  
15 combination. It's a marketing strategy, but they are  
16 there, oh, my gosh.

17 COMMISSIONER MILLER: Okay. The yellow  
18 light is on. I have a couple of more questions that  
19 probably go more to Mr. Greenwald, so I'll save them  
20 for the next opportunity. Thank you.

21 CHAIRMAN KOPLAN: Thank you, Commissioner.  
22 Commissioner Hillman?

23 COMMISSIONER HILLMAN: I wonder, Mr.  
24 Scabbia, if you could comment on Mr. Freeman cited  
25 this article about a recent acquisition by Citrovita

1 of another company in Brazil. I wondered if you could  
2 say anything on the public record, and if not, if you  
3 could add anything in terms of the details of this,  
4 what it did in terms of any changes in capacity or  
5 production levels, and what is to come of that.

6 MR. SCABBIA: That's an acquisition that was  
7 closed, I think, last week, and we acquired a company  
8 called Sucoricco, also a newcomer that won't be found  
9 in any one of your files because they came on board, I  
10 think, in 1996 or so. The process capacity of that  
11 plant equals today to about one-third of what  
12 Citrovia is capable of processing in a regular season  
13 without getting into 180 days, 160 days, just to give  
14 you a rough idea.

15 The important thing to note is that this  
16 Sucoricco company has a long-term deal with Catrale,  
17 so all of the juice they make under the contract has  
18 to be delivered to Catrale, and Catrale is the one who  
19 markets it. We see that as an opportunity for us to  
20 establish a foothold, so once this agreement is over,  
21 we will be able to use that volume to fulfill the  
22 growth that we see in the markets that we've been  
23 talking about, and, again, we're talking about --  
24 those 15 million boxes are going to represent less  
25 than 4 or 5 percent of the total Brazilian production.

1           So if you want to keep growing, if you want  
2   to really establish an even strong presence in Europe  
3   and Asia, we need to cope with the growth that we see,  
4   and that's what's going to allow us to do it down the  
5   road, not right now, because, again, this long-term  
6   agreement with Catrale is still in place, and we have  
7   to honor it.

8           COMMISSIONER HILLMAN: It's in place for how  
9   long, and is it entirely to serve Catrale in the U.S.?

10          MR. SCABBIA: How long the contract goes, we  
11   would have to discuss that confidential.

12          COMMISSIONER HILLMAN: And is it only in the  
13   U.S.? You're supplying Catrale in the U.S.?

14          MR. SCABBIA: No, no, no. We're supplying  
15   Catrale in Brazil, and they take the product there,  
16   and they ship it to wherever they want. We don't know  
17   where it's going. Now, actually, they come to the  
18   plant, they take the product there, and what they do  
19   with the product afterwards, we don't know.

20          COMMISSIONER HILLMAN: Okay. But is all of  
21   the production of this purchase controlled by this  
22   contract with Catrale?

23          MR. SCABBIA: Yes, 100 percent.

24          COMMISSIONER HILLMAN: So it effectively  
25   adds nothing to your capacity to ship outside --

1 MR. SCABBIA: Not today, not until the deal  
2 is over.

3 COMMISSIONER HILLMAN: Okay. Well, if the  
4 specific numbers of this could be put into the post-  
5 hearing brief, I think that would be very helpful, Mr.  
6 Greenwald.

7 MR. GREENWALD: Sure.

8 COMMISSIONER HILLMAN: I think, with that, I  
9 have no further questions, Mr. Chairman. Thank you.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.  
11 Commissioner Lane?

12 COMMISSIONER LANE: I have no questions.

13 CHAIRMAN KOPLAN: Commissioner Pearson?  
14 Thank you. I have just two left.

15 You mentioned, Mr. Greenwald, that you have  
16 an extensive sales and logistics network in Europe and  
17 Asia. Do you have other contractual obligations that  
18 would prevent you from shifting sales from these  
19 markets to the U.S.?

20 MR. SCABBIA: "Other" meaning? We have  
21 long-term contracts with European customers, if that's  
22 what you're asking. I don't know if I understood the  
23 question right.

24 CHAIRMAN KOPLAN: Right.

25 MR. SCABBIA: European and Asian customers

1       that --

2                   CHAIRMAN KOPLAN:   When you say "long-term,"  
3       could you specify?

4                   MR. SCABBIA:   This business operates in what  
5       you call long-term, one year, two years.  There's a  
6       few five-year deals that we have with large  
7       corporations here.

8                   CHAIRMAN KOPLAN:   I'm trying to understand.  
9       Depending on how this turns out, does that prevent you  
10      from shifting sales from some of those markets to the  
11      United States?

12                  MR. SCABBIA:   No.  What keeps us from  
13      shifting is a business decision more than the existing  
14      contracts that we have because we don't have all of  
15      our production contracts on a five-year base.

16                  CHAIRMAN KOPLAN:   So you have the ability to  
17      do so, if you choose to.

18                  MR. SCABBIA:   Exactly.  From the business  
19      standpoint, we are much better off sticking to the  
20      market share that we gain.

21                  CHAIRMAN KOPLAN:   Thank you.  On page 4 of  
22      the prehearing brief, you state, and I quote:  "Like  
23      prices for other traded commodities, FCOJ market  
24      prices are dictated by changes in aggregate supply and  
25      demand.  Because revocation of the order would not

1 have a discernable impact on the aggregate supply of  
2 FCOJ from Brazil, it's impossible to conclude that  
3 revocation would have a discernable impact on U.S.  
4 market prices for FCOJ."

5 I got into that this morning earlier with  
6 the first panel, but what I'm trying to understand is  
7 don't commodity prices shift primarily due to marginal  
8 shifts in supply and demand rather than aggregate  
9 ones? Wouldn't the revocation of this order cause  
10 marginal increases in FCOJ supply to the U.S. through  
11 increased imports plus negatively impacting prices?

12 MR. GREENWALD: I think the testimony here  
13 is pretty unequivocal that there will be no  
14 discernable, and by that I mean marginal, increase in  
15 imports. When you listen to Mr. Scabbia, when you  
16 look at how VINA now sells and no change in that, I  
17 think the record is clear that there will be no shift.  
18 When I use the word "aggregate," I should stick, I  
19 suppose, to the law. When I used the word  
20 "aggregate," what I meant was incremental or marginal  
21 increases in supplies. I don't differ with you, but -  
22 -

23 CHAIRMAN KOPLAN: Could you repeat that?  
24 Can you say that again?

25 MR. GREENWALD: When I used the word

1 "changes in aggregate supply," what I meant by that  
2 was that at any point in time the aggregate supply  
3 will be what it is, and there will be the increases at  
4 the margin over a previous point in time, and it is  
5 those increases that change sort of the equation you  
6 look at to develop pricing. But I think the testimony  
7 here has been unequivocal in that there will be no  
8 discernable increase in supply, as far as we can tell,  
9 from Brazil if the order were to be revoked. The  
10 capacity isn't there to make it happen.

11 CHAIRMAN KOPLAN: Okay. Thank you. I  
12 think, with that, I have no further questions.

13 Commissioner Miller, I thought you had a  
14 couple left.

15 COMMISSIONER MILLER: Yes, I do. I would  
16 pose to Mr. Greenwald the same question I posed to  
17 counsel at the end of Mr. Freeman's presentation, if  
18 you could address in the post-hearing, and I sort of  
19 amend it a little bit, to look at some of the  
20 Commission's precedents in sunset cases where there  
21 has been a relatively low level of support or a  
22 domestic industry support for a continuing order or we  
23 had a situation, at least in one, maybe both  
24 instances, where the domestic industry said it  
25 supported, and then withdrew its support before the

1 Commission reached even this stage of whatever. So to  
2 look at those and to see if you think they are, you  
3 know, informative, but also taking into account the  
4 fact that Dreyfus is supporting a continuation of the  
5 order at this point in time and whether that changes  
6 some of the precedents that I was looking at and  
7 whether they are useful.

8 I think, with that, I have no further  
9 questions for you. Thank you.

10 CHAIRMAN KOPLAN: Thank you, Commissioner  
11 Miller.

12 Seeing that there are no additional  
13 questions from the dais, Ms. Mazur, does staff have  
14 questions of this panel before they are released?

15 MR. DIEHL: This is Michael Diehl on behalf  
16 of the Office of the General Counsel. We have a few  
17 questions, Mr. Chairman.

18 Actually, these are things that I would just  
19 ask you to discuss in the post-hearing brief. Could  
20 you discuss how the Commission has considered duty  
21 drawback in any past investigations? And then could  
22 you also discuss whether, as an alternative to a net-  
23 import-volume approach such as you suggested, whether  
24 the Commission might instead consider that duty  
25 drawback as an other economic factor separate from



1 volume itself? And then if you do think it should be  
2 considered as an other economic factor, how exactly  
3 should the Commission do so?

4 MR. GREENWALD: Sure.

5 MS. MAZUR: Mr. Scabbia, I have one  
6 question. I believe you made a passing reference to  
7 Branco Peres to say that it is no longer in operation.  
8 Is that correct?

9 MR. SCABBIA: Yes. What they do is that  
10 currently they are selling all of their fruit to  
11 Catrale, as far as we know. That's market  
12 information. But as -- own processing facility, I  
13 think the word is "mothball." In other words, it's  
14 been in standby just in case something goes wrong with  
15 their relationship, but currently they are not  
16 processing any fruit. They are not shipping any juice  
17 to any market.

18 MS. MAZUR: That plant and equipment, then,  
19 is in mothball as opposed to being liquidated.

20 MR. SCABBIA: Yes. It's missing a few  
21 pieces of equipment. It's not 100 percent right. So  
22 if one day they want to reactivate the plant, as far  
23 as we know, -- again, we are not in there -- they  
24 would have to spend some money, you know, to finish or  
25 to bring in what is missing.

1 MS. MAZUR: Thank you. Staff has no further  
2 questions.

3 CHAIRMAN KOPLAN: Thank you, Ms. Mazur, and  
4 thank you for your questions.

5 I want to thank the witnesses -- this panel  
6 for its testimony.

7 Mr. Greenwald, I've heard you say on more  
8 than one occasion this morning and this afternoon that  
9 this is not the normal case, so I'm going to put that  
10 to the test now. You have 15 minutes left from your  
11 direct presentation. Do you intend to use that?

12 MR. GREENWALD: No, sir.

13 CHAIRMAN KOPLAN: Then we can go directly to  
14 closing.

15 MR. GREENWALD: It's just me. I don't think  
16 you want to hear anymore from me, so I don't plan any  
17 closing. Is Mr. Freeman going to close?

18 CHAIRMAN KOPLAN: No. He doesn't get a  
19 closing.

20 MR. GREENWALD: Then you've heard what we  
21 have to say. There is no point in --

22 CHAIRMAN KOPLAN: Okay. As a nonparty, they  
23 do not get a closing.

24 Well, you've been in front of us many times,  
25 Mr. Greenwald. I'm at a loss for words when you waive

1 all of that time, so, with that, before you change  
2 your mind, I'll go right to my closing statement and  
3 say that post-hearing briefs, statements responsive to  
4 questions and requests of the Commission, and  
5 corrections to the transcript must be filed by  
6 February 10, 2005. Closing of the record and final  
7 release of data to parties, March 4, 2005, and final  
8 comments, March 8, 2005.

9 I want to thank both panels for their  
10 testimony this morning, and I want to thank staff for  
11 their assistance in this proceeding, and with that, we  
12 are adjourned.

13 (Whereupon, at 12:32 p.m., the hearing was  
14 adjourned.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Frozen Concentrated Orange Juice from  
Brazil

**INVESTIGATION NO.:** 731-TA-326

**HEARING DATE:** February 1, 2005

**LOCATION:** Washington, D.C.

**NATURE OF HEARING:** Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

**DATE:** 2/1/05

**SIGNED:** LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

**SIGNED:** Carlos Gamez  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

**SIGNED:** Kyle P. Johnson  
Signature of Court Reporter